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SUPREME COURT: U. S.

VOLUME I

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 567

**FEDERAL COMMUNICATIONS COMMISSION,
PETITIONER**

vs.

RCA COMMUNICATIONS, INCORPORATED

No. 568

**MACKAY RADIO AND TELEGRAPH COMPANY,
INCORPORATED, PETITIONER**

vs.

RCA COMMUNICATIONS, INCORPORATED

**ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT**

**PETITIONS FOR CERTIORARI FILED JANUARY 26, 1953
CERTIORARI GRANTED MARCH 9, 1953**

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**Application Filed by Mackay Radio and Telegraph Co.
for Modification of License.**

(Received June 3, 1946.)

[1] MACKAY RADIO AND TELEGRAPH COMPANY, INC.

American Cable and Radio System

All America Cables and Radio - Commercial Cables

Mackay Radio

Sociedad Anonima Radio Argentina

**67 Broad Street
New York 4, N. Y.**

May 29, 1946.

**Mr. T. J. SLOWIE, Secretary
Federal Communications Commission
Washington 25, D. C.**

Dear Sir:

Pursuant to the Commission's request contained in its letter of March 7, 1946, Serial No. 154, the time for compliance therewith having been extended until May 31st, we herewith enclose the following in duplicate:

Application for renewal of license of

File No. TL-RH-44-Brentwood, N. Y.

Application for license or modification of license

File No. TL-RH-44-Brentwood, N. Y.

Application for license or modification of license

File No. T5-RH-40-Palo Alto, California.

Application for renewal of license of

File No. T5-RH-40-Palo Alto, California.

Application for renewal of license of

File No. T5-RH-363-Kailua, T. H.

We have not included in these applications points involved in the so-called "British Commonwealth" hearings—Dockets 7094 and 7412.

Very truly yours,

/s/

JAMES A. KENNEDY

JAMES A. KENNEDY

Vice President and General Attorney

*Application Filed by Mackay Radio and Telegraph Co. for
Modification of License.*

[2] UNITED STATES OF AMERICA

FEDERAL COMMUNICATIONS COMMISSION

**Fixed Public
Pt/Pt Telegraph**

**8047-MLHT-A
Brentwood, N. Y.**

**APPLICATION FOR RADIO STATION LICENSE
OR MODIFICATION THEREOF**

(Other than Broadcasting, Amateur, Ship, and Aircraft)

Important: Before filling out this form, read the instructions and footnotes on the last page.

(Do not write above this line)

Name of Applicant¹—Mackay Radio and Telegraph Company, Inc.

Mail Address—67 Broad Street, New York 4, N. Y.

Application is hereby made for: (Check applicable items in space at right)

a) License to cover construction permits(s) for new station

b) Modification of License:

File No. T1-RH-44 and Call letters all at Brentwood, New York of current license

(1) Change in frequencies or other particulars of operation

(2) Change in authorized power without new construction

(3) To cover construction permit(s) for additional transmitter(s)

*Application Filed by Mackay Radio and Telegraph Co. for
Modification of License.*

- (4) To cover construction permit(s) for replacement transmitter(s)
- (5) Change in location (Construction permit required)
- (6) Operation with licensed operator at remote control point only?
- (7) Change in points of communication Yes
- (8) Change in other particulars (describe)

If this application is for License or Modification of License to cover outstanding construction permits:

- a) List in the space below the outstanding permits which the application covers:

File No.	Date	Call Letters	Manufacturer of Transmitter(s)	Type No.	Serial Nos.
----------	------	--------------	--------------------------------	----------	-------------

- [3] (b) If licensed transmitters are being deleted or replaced, show the following with respect to such transmitters:

Manufacturer	Type	Serial Nos.
--------------	------	-------------

- (c) When was the construction specified in 3(a) completed?

Yes or No

- (d) Is the station now ready for operation?

Yes or No

- (e) Have all the terms of the construction permit(s) listed in 3(a) been met?

Yes or No

- (f) Are all the statements made in the applications for the construction permits or the modifications thereof mentioned in 3(a) still true as of the date of this application?

Yes or No

*Application Filed by Mackay Radio and Telegraph Co. for
Modification of License.*

- (g) If the answer to either or both 3(d), and 3(e) above is "no", the discrepancies must be shown in appropriate places in this form or listed separately in exhibits and submitted as a part of this form.³

Indicate method of submission below:

Numbers of paragraphs containing corrected data

Identification of exhibits containing corrected data

4. Specify in the table all particulars of operation exactly as they are desired in the license or modification thereof.

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Frequencies	Hours	Maximum Power	Emission	Modulating Frequency (cycles)	Transmission Speed (bauds)	Points of Communication

Column Notes:

- List all frequencies, indicating whether kilocycles or megacycles.
- Indicate as unlimited, day only, continuous, etc. (This item refers to intended hours of use of the specific frequency.)
- Maximum carrier power into antenna. (Specify whether watts or kilowatts)
- A_0 , A_1 , A_2 , A_3 , A_4 , A_5 , or special. List all types of emission desired for each frequency. Describe special emission in space for remarks below. If emissions other than those defined in the Rules of the Commission (frequency modulating the phase, pulse, etc.), describe in detail, giving the characteristics of the emission proposed, attaching additional sheets to the application if necessary.
- Give maximum modulating frequency for each type of emission involved.
- Give maximum transmission speed employed in normal operation opposite each type of emission involved. To convert transmission speed of Continental Morse to bauds, multiply the number of words per minute by 0.8.
- Show below the operating agency at each point of communications.³

*Application Filed by Mackay Radio and Telegraph Co. for
Modification of License.*

Remarks: See Attachment A.

[4] If this application is for authority to operate with a licensed operator on duty at a remote control point only:²

(a) What will be the location of the remote control point?

State County

City or Town Street and No.

(b) What will be the airplane distance between transmitter location and the remote control point?

(c) By what means will the station be monitored while in operation?³

(d) Can the transmitter be shut down by the licensed operator at the remote control point so as to prevent operation from any other point?

Yes or No

(e) How will unauthorized persons be prevented from having access to the transmitter?

6. Proposed location of transmitter:

(a) If portable:, mobile:, or portable-mobile: give geographical area of proposed operation in the space provided:

(b) If permanently located at a fixed location, give

State County

City or town Street and number

N. Latitude: Degrees, minutes, seconds

W. Longitude: Degrees, minutes, seconds

(Give latitude and longitude correct to seconds.)

*Application Filed by Mackay Radio and Telegraph Co. for
Modification of License.*

7. Note any alterations in transmitter(s) or antenna systems not previously reported to the Commission.²
.....

[5] 8. (a) Have there been any changes in the data furnished in the application for construction permit covering ownership, citizenship, station control, business connections, and monopolistic practices? No.

.....
Yes or No

(b) Have such changes been reported to the Commission? If not, such data must be submitted herewith?

Yes or No

(a) Is station to be open to public correspondence? Yes

.....
Yes or No

Is so, state hours during which station will be open for such service Continuously

(b) Will any charge be made for handling public correspondence? Yes

.....
Yes or No

If so, state schedules of charges³ See F. C. C. Tariff #2

The statement of rates required herein does not constitute a filing of schedules of charges required by Section 203 of the Communications Act of 1934, as amended, prior to commencing service.

(c) State basis of division of charges with other stations³ On file with F. C. C.

If this application is for modification of license, state why the proposed change(s) is (are) deemed necessary and

7

*Application Filed by Mackay Radio and Telegraph Co. for
Modification of License.*

the purpose(s) it will serve.³ See attachment A under Article 4 (Remarks). See also attachment B.

The applicant waives any claim to the use of any particular frequency or of the ether as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests a station license in accordance with this application.

Dated this 29th day of May, 1946.

MACKAY RADIO AND TELEGRAPH COMPANY, INC.

Applicant. (Must correspond with name in
Paragraph 1.)

By JAMES A. KENNEDY,

J. A. KENNEDY

Title or Official Capacity

Vice President and General Counsel.

Title or Official capacity.

Subscribed and sworn to before me this 29th day of May,
1946.

ROSS A. WAKEMAN

Notary Public

ROSS A. WAKEMAN

Notary Public, New York County

N. Y. Co. Clk's No. 38, Reg. No. 33-W-S

Commission Expires March 30, 1948

(Notary public's seal must be affixed where law of jurisdiction requires, otherwise state that law does not require seal.)

*Application Filed by Mackay Radio and Telegraph Co. for
Modification of License.*

[6] ATTACHMENT B.

Statement In Support

Applicant is of the opinion that the existing law and governmental policy of the United States require competition in world-wide international telegraph communications; and that in order for a radio carrier to effectively compete it must have direct circuits to the important business, industrial and governmental centers throughout the world. Therefore, it is our opinion that under existing law and governmental policy, public interest, convenience and necessity can be best served by authorizing two public service circuits to whatever countries said circuits are requested. Accordingly, we believe that in addition to specific reasons as may apply to certain of the circuits herein applied for, the granting of all of them will serve public interest, convenience and necessity for the abovementioned general reason. Moreover, Applicant has under way an expansion and modernization program which will justify and require more circuits and a larger volume of traffic.

**I. POINTS TO WHICH APPLICANT HAS THE ONLY
DIRECT PUBLIC CIRCUIT.**

Applicant's circuits are the only direct telegraph circuits (cable or radio) operating between the United States and Algeria, Ethiopia, Gold Coast, Hungary, Rumania, Denmark, British Guiana, Afghanistan, Uruguay, Madagascar and Austria, and therefore should be continued in the public interest. In addition, it is believed that there is sufficient traffic between the United States and each of said countries to justify the continuance (with the possible exceptions of Gold Coast and British Guiana); and the said circuits are necessary to Applicant from the standpoint of its financial welfare and economy and of its world-

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*Application Filed by Mackay Radio and Telegraph Co. for
Modification of License.*

wide coverage. Moreover, with the exceptions of Gold Coast and British Guiana, we believe the foreign governments of the respective countries desire that the circuits be continued in operation.

II. COMPETITIVE CIRCUITS.

Applicant is now operating competitive circuits to the following countries, under Special Temporary Authorizations which the Commission found would serve public interest, convenience and necessity: Germany (Berlin and Nurnberg), Dominican Republic (Ciudad Trujillo), Spain (Madrid), France (Paris), Czechoslovakia (Praha) and Tangier. The continued operation of these circuits will serve

[7] Applicant also requests the addition of the following new points of communication under regular license authority. A statement is attached pointing out why public interest, convenience and necessity will be served by granting licenses to each of said points.

Point of Communication	Operating Agency
Berne, Switzerland	Radio Suisse
Lisbon, Portugal	Companhia Portuguesa Radio Marconi
Stockholm, Sweden	The Government, P. T. T.
Surinam	The Government, P. T. T.
The Hague, Netherlands	The Government, P. T. T.

[8] *Czechoslovakia (Praha)*—This is a reestablished circuit which applicant operated for years before the war under a regular license after a determination by the Com-

* Applicant has reason to believe that the operating agencies of the points named look favorably upon the operation of a circuit with Applicant. We understand that the specific naming of new points herein does not prejudice Applicant's position with respect to additional applications which it may wish to file.

*Application Filed by Mackay Radio and Telegraph Co. for
Modification of License.*

mission that the operation of same was in the public interest. Nothing has happened to alter that finding.

Tangier—This is a new circuit recently authorized by the Commission and established primarily for the relaying of traffic to Russia and other points. It seems clear that the Commission has already determined its value on a permanent basis.

III. AUTHORIZED CIRCUITS NOT YET IN OPERATION.

Bulgaria (Sofia) and

Yugoslavia (Belgrade)—The Commission authorized these circuits to applicant some time ago, and applicant has recently sent representatives to negotiate with the respective government officials which negotiations are progressing satisfactorily. R. C. A. C. is also authorized to operate to these points. Applicant believes there is sufficient traffic to justify duplicate circuits and applicant's circuits are necessary to its financial welfare and System coverage.

Italy (Rome)—Applicant operated a circuit to Rome prior to the last war, and is ready to reestablish service as soon as the Italian Administration can secure frequencies from the Allied Control Commission, which, we are advised, will be accomplished in a few days. R. C. A. C. is operating the only telegraph service with the Italians at the present time as the Azores-Rome cable is in the hands of the British. Certainly the volume of traffic between the United States and Italy justifies the two radiotelegraph circuits which the Commission has previously authorized.

IV. NEW CIRCUITS REQUESTED

Applicant herein requests regular licenses to communi-

*Application Filed by Mackay Radio and Telegraph Co. for
Modification of License.*

Sweden, Surinam and The Hague. Applicant has been carrying on negotiations with representatives of the operating agencies in the countries abovementioned and said negotiations are progressing favorably.

The Portuguese Company indicated to a Vice President of applicant some time ago that it was agreeable to operating a circuit with applicant and that the only difficulty at that time was the need for certain radio equipment. Applicant has assisted the Portuguese Company in securing said equipment which has recently been made available. As soon as said equipment is installed the Portuguese Company, we believe, will desire to operate a station with applicant.

[9] Applicant has recently submitted a contract to the Netherlands Government for its approval covering the operation of a circuit between *The Hague* and applicant at New York. The Dutch Government has indicated its agreement to such a circuit. We believe that likewise the Dutch will be agreeable to the operation of a circuit between *Surinam* and applicant at New York.

Applicant has been negotiating with Radio Suisse at *Berne* and with the Swede Government at *Stockholm* and we believe that these Governments will be agreeable to circuits with applicant as soon as local difficulties can be ironed out.

All of the abovementioned circuits are important to applicant's world-wide System and to its financial welfare and economy. Said points are important traffic centers which are not reached from the United States directly except by radio and there is only one United States radio-telegraph carrier now serving said points.

**Application of Mackay Radio and Telegraph Co. for
Authority to Communicate with The Netherlands
via Tangier Relay.**

(Received December 10, 1947.)

[127] MACKAY RADIO AND TELEGRAPH COMPANY, INC.

American Cable & Radio System

**All-America Cables and Radio - Commercial Cables
Mackay Radio - Sociedad Anonima Radio Argentina**

**67 Broad Street
New York, 4, N. Y.**

P-77044

8 December 1947

**Mr. T. J. Slowie, Secretary,
Federal Communications Commission,
Washington 25, D. C.**

Dear Mr. Slowie:

We submit herewith an application, in duplicate, for authority to communicate with The Netherlands via Tangiers relay.

Due to shortage of personnel and facilities for direct circuit operation, the Administration of The Netherlands has asked that the circuit be operated via Tangiers starting about January 1, 1948 and until facilities for direct operation become available.

Yours very truly,

**/s/ L. SPANGENBERG
L. SPANGENBERG,
Vice President.**

LS:P

Herewith:

*Application of Mackay Radio and Telegraph Co. for
Authority to Communicate with The Netherlands
via Tangier Relay.*

[128] UNITED STATES OF AMERICA

FEDERAL COMMUNICATIONS COMMISSION

Serv.....

File

Class.....

Call

**APPLICATION FOR RADIO STATION LICENSE
OR MODIFICATION THEREOF**

(Other than Broadcasting, Amateur, Ship, and Aircraft)

Important: Before filling out this form, read the instructions and footnotes on the last page.

(Do not write above this line)

Name of Applicant¹ **MACKAY RADIO AND TELEGRAPH
COMPANY, INC.**

Mail Address **67 Broad Street, New York 4, N. Y.**

Application is hereby made for: (Check applicable items in
space at right)

(a) License to cover construction permit(s) for new
station

(b) Modification of License:

File No. **T1-RH-44** and Call letters, all currently
licensed of current license

(1) Change in frequencies or other particulars of
operation

(2) Change in authorized power without new con-
struction

(3) To cover construction permit(s) for additional
transmitter(s)

*Application of Mackay Radio and Telegraph Co. for
Authority to Communicate with The Netherlands
via Tangier Relay.*

- (4) To cover construction permit(s) for replacement transmitter(s)
- (5) Change in location (Construction permit required)
- (6) Operation with licensed operator at remote control point only²
- (7) Change in points of communication Yes
- (8) Change in other particulars (describe)

If this application is for License or Modification of License to cover outstanding construction permits:

- (a) List in the space below the outstanding permits which the application covers:

File No.	Date	Call Letters	Manufacturer of Transmitter(s)	Type No.	Serial Nos.
----------	------	--------------	--------------------------------	----------	-------------

- [129] (b) If licensed transmitters are being deleted or replaced, show the following with respect to such transmitters:

Manufacturer	Type	Serial Nos.
--------------	------	-------------

- (c) When was the construction specified in 3(a) completed?
- (d) Is the station now ready for operation?
Yes or No
- (e) Have all the terms of the construction permit(s) listed in 3(a) been met?
Yes or No

*Application of Mackay Radio and Telegraph Co. for
Authority to Communicate with The Netherlands
via Tangier Relay.*

(f) Are all the statements made in the applications for the construction permits or the modifications thereof mentioned in 3(a) still true as of the date of this application?

Yes or No

(g) If the answer to either or both 3(d) and 3(e) above is "no", the discrepancies must be shown in appropriate places in this form or listed separately in exhibits and submitted as a part of this form.³

Indicate method of submission below:

Numbers of paragraphs containing corrected data

Identification of exhibits containing corrected data

4. Specify in the table all particulars of operation exactly as they are desired in the license or modification thereof

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Frequencies	Hours	Maximum Power	Emission	Modulating Frequency (cycles)	Transmission Speed (bauds)	Points of Communication

The Netherlands

All Particulars Columns 1-6 Remain Unchanged. (Amsterdam)

Column Notes:

- (1) List all frequencies, indicating whether kilocycles or megacycles.
- (2) Indicate as unlimited, day only, continuous, etc. (This item refers to intended hours of use of the specific frequency.)
- (3) Maximum carrier power into antenna. (Specify whether watts or kilowatts.)
- (4) A₀, A₁, A₂, A₃, A₄, A₅, or special. List all types of emission desired for each frequency. Describe special emission in space for remarks below. If emissions other than those defined in the Rules of the Commission (frequency modulation, the phase, pulse, etc.), describe in detail, giving the characteristics of the emission proposed, attaching additional sheets to the application if necessary.
- (5) Give maximum modulating frequency for each type of emission involved.
- (6) Give maximum transmission speed employed in normal operation opposite each type of emission involved. To convert transmission speed of Continental Morse to bauds, multiply the number of words per minute by 0.8.
- (7) Show below the operating agency at each point of communication.³

*Application of Mackay Radio and Telegraph Co. for
Authority to Communicate with The Netherlands
via Tangier Relay.*

Remarks:

The applicant herein requests that The Netherlands be added as a point of communication via Tangiers relay under special provisions of license No. T1-RH-44 and modification No. 8-47, File No. 15598-MLHT-B.

[130] 5. If this application is for authority to operate with a licensed operator on duty at a remote control point only:²

(a) What will be the location of the remote control point?

State County
City or Town Street and No.

(b) What will be the airplane distance between transmitter location and the remote control point?

(c) By what means will the station be monitored while in operation?³

(d) Can the transmitter be shut down by the licensed operator at the remote control point so as to prevent operation from any other point?

Yes or No

(e) How will unauthorized persons be prevented from having access to the transmitter?

6. Proposed location of transmitter:

(a) If portable:, mobile:, or portable-mobile: give geographical area of proposed operation in the space provided:

(b) If permanently located at a fixed location, give:

State County
City or town Street and number

*Application of Mackay Radio and Telegraph Co. for
Authority to Communicate with The Netherlands
via Tangier Relay.*

N. Latitude: Degrees, minutes,
seconds

W. Longitude: Degrees, minutes,
seconds

(Give latitude and longitude correct to seconds.)

7. Note any alteration in transmitters(s) or antenna systems not previously reported to the Commission.³

8. (a) Have there been any changes in the data furnished in the application for construction permit covering ownership, citizenship, station control, business connections, and monopolistic practices? No

Yes or No

(b) Have such changes been reported to the Commission? If not, such data must be submitted herewith.

Yes or No

[131] 9. (a) Is station to be open to public correspondence? Yes

Yes or No

If so, state hours during which station will be open for such service Continuously

(b) Will any charge be made for handling public correspondence? Yes

Yes or No

If so, state schedules of charges³ See Joint Tariffs F. C. C. Nos. 1 and 5.

The statement of rates required herein does not constitute a filing of schedules of charges required by Section 203 of the Communications Act of 1934, as amended, prior to commencing service.

*Application of Mackay Radio and Telegraph Co. for
Authority to Communicate with The Netherlands
via Tangier Relay.*

- (c) State basis of division of charges with other stations³ Equal division of radio tolls
10. If this application is for modification of license, state why the proposed change(s) is (are) deemed necessary and the purpose(s) it will serve.³ The Netherlands Administration has requested that the New York-Amsterdam circuit be opened via Tangiers about January 1, 1948. Operation via Tangiers will accelerate the opening of service which may otherwise be delayed until The Netherlands is prepared for direct circuit operation.
11. The applicant waives any claim to the use of any particular frequency or of the ether as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests a station license in accordance with this application.

Dated this 8th day of December, 1947.

MACKAY RADIO AND TELEGRAPH COMPANY, INC.

Applicant (must correspond with name in
Paragraph 1.)

By L. SPANGENBERG

Title or official capacity

L. SPANGENBERG, Vice President.

*Application of Mackay Radio and Telegraph Co. for
Authority to Communicate with The Netherlands
via Tangier Relay.*

Subscribed and sworn to before me this 8th day of
December, 1947.

ALMA PABST
Notary Public

[SEAL]

ALMA PABST
Notary Public, State of New York
Residing in Queens County
Queens Co. Clk's No. 1999, Reg. No. 178-P-8
Certificates filed in
N. Y. Co. Clk's No. 88
Commission Expires March 30, 1948

(Notary public's seal must be affixed where
law of jurisdiction requires, otherwise state
that law does not require seal.)

FOOTNOTES

1 Must correspond exactly with name in existing license of construction permit.

2 In certain cases application may be made for authority to operate a station with the licensed operator on duty at some point other than the location of the transmitter. The information required by this paragraph should be furnished only with respect to the point at which the licensed operator is on duty and not with regard to "dispatching points" or other places from which speech or other signals may be fed to the transmitter.

3 Use additional sheets where necessary.

INSTRUCTIONS

Submit in duplicate direct to the Federal Communications Commission, Washington, D. C. Swear to one copy.

Complete information must be furnished under Sections of the application. Failure to do so may cause the return of the application, with consequent delay.

It is recommended that, before submitting application, applicant obtain and refer to Parts 1 and 2 of the Commission's Rules and, in addition, the following appropriate part(s) governing the type of service involved in the application: Experimental Services, Part 5; Fixed Public Services, Part 6; Coastal and Marine Relay Services, Part 7; Aviation Services, Part 9; Emergency Services, Part 10; Miscellaneous Services, Part 11. Any applicant proposing to operate a Fixed Public Station, a Public Coastal Station, or an Aviation Station in Alaska should also obtain Part 14.

Commission Order Granting Petition for Reconsideration of RCA Communications, Inc., of November 4, 1947, and Designating for Hearing the Application of Mackay.

(Adopted February 6, 1948.)

FCC 48-371
16910-2/48

[135]

BEFORE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 2, D. C.

IN THE MATTER

of

MACKAY RADIO AND TELEGRAPH COMPANY Applications for radio telegraph circuits between the United States and Finland, Portugal, Surinam, and The Netherlands.

Docket No. 8777.

ORDER.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 6th day of February, 1948;

The Commission, having under consideration the record of the proceedings in Docket No. 8465, *In the Matter of Mackay Radio and Telegraph Company Applications for Special Temporary Authorizations to communicate with Helsinki, Finland; Lisbon, Portugal; Paramaribo, Surinam; and The Hague, Netherlands*; and having also under consideration a petition for reconsideration of the Commission's Order of October 13, 1947, in Docket No. 8465, filed

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by RCA Communications, Inc., on November 4, 1947, in which it is requested that said Commission order be reconsidered and set aside, and that the Commission take appropriate action to revoke, pending a hearing, the authority of Mackay to communicate with the four countries covered by said order of October 13, 1947; and an "opposition" to said petition filed by Mackay Radio and Telegraph Company on November 17, 1947;

IT APPEARING, That on January 29, 1948, Mackay Radio and Telegraph Company filed a telegraphic application (File Nos. T1-RSA-657-1; T1-RSA-658-1; T1-RSA-659-1; T1-RSA-680-1) for renewal for a period of six months of the outstanding special temporary authorizations to communicate with the above four points; and that on December 10, 1947, Mackay Radio and Telegraph Company filed an application for modification of license (File No. 7619-C4-ML-C) for authority to communicate with The Netherlands via its relay station at Tangier;

IT FURTHER APPEARING, That the aforementioned special temporary authorizations, as renewed, are due to expire on February 13, 1948;

IT FURTHER APPEARING, That upon reconsideration of the order of October 13, 1947, in Docket No. 8465, and the record in that Docket, certain issues of fact and policy are presented upon which there should be a hearing at which the parties will have an opportunity to present evidence;

IT FURTHER APPEARING, That Mackay Radio and Telegraph Company has on file with the Commission applications for modification of license to communicate with the above-named countries (File Nos. 8047-MLHT-A and 10364-MLHT-B), which applications are pending in Docket No. 7974, *In the Matter of Radiotelegraph Service between the*

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*United States and Foreign and overseas points and assignment
of frequencies for such service;*

IT FURTHER APPEARING, That the Commission, upon examination of the above-described applications of Mackay Radio and Telegraph Company for renewal of the aforementioned Special Temporary Authorizations and for [136] modification of license, is unable to determine that public interest, convenience, or necessity would be served by the granting thereof;

IT IS ORDERED, That the above petition of RCA Communications, Inc., for reconsideration is granted;

IT IS FURTHER ORDERED, That the outstanding special temporary authorizations to Mackay Radio and Telegraph Company to communicate with Finland, Portugal, Surinam, and The Netherlands, are cancelled and set aside, effective 11:00 p.m. Eastern Standard Time, February 12, 1948;

IT IS FURTHER ORDERED, That, pursuant to Section 309(a) of the Communications Act of 1934, as amended, the above applications of Mackay Radio and Telegraph Company for modification of license (File Nos. 8047-MLHT-A and 10364-MLHT-B), insofar as they relate to communication with the above-named four countries, are withdrawn from Docket No. 7974, and, together with the above application of Mackay Radio and Telegraph Company for renewal of the Special Temporary Authorizations (File Nos. T1-RSA-657-1; T1-RSA-658-1; T1-RSA-659-1; T1-RSA-680-1) and the above application of Mackay Radio and Telegraph Company for modification of license (File No. 7619-ML-C) to authorize communication with The Netherlands via its relay station at Tangier, ARE DESIGNATED FOR HEARING herein, for the following reasons:

(1) To determine whether public interest, convenience, or necessity would be served by authorizing

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Mackay Radio and Telegraph Company to communicate either temporarily, or on a regular basis, with one or more of the countries applied for, in the light of all pertinent factors relating to such determination, including, but not limited to, the following:

(a) The extent of public need, if any, for additional telegraph communication facilities between the United States, on the one hand, and each of the four countries involved herein, on the other hand;

(b) The present and expected volume of telegraph traffic between the United States, on the one hand, and each of the four countries, on the other hand;

(c) The nature, capacity and adequacy of existing communication facilities between the United States, on the one hand, and each of the four countries, on the other hand;

(d) The extent to which applicant's presently authorized frequencies and facilities will be used for operating the proposed circuits between the United States and each of the four countries, and whether such use is the most desirable use of these frequencies and facilities for providing the United States public with rapid and efficient communication service;

[137] (e) To determine with respect to the proposed operation with each of the four countries, the extent to which the applicant will be required, in order to give adequate service, to use frequencies and facilities in addition to those now in use by it;

(f) The capacity, transmission qualities, and scheduled hours of operation of each of the circuits proposed in the above applications;

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(g) The nature of any contracts, agreements, understandings, and routing practices between the applicant and any other carrier, or operating administration, in connection with the operation of the circuits proposed in the above applications;

(h) The nature of the service to be rendered by applicant over each of the proposed circuits, including the classes of service to be offered, the charges to be made for each such class, and the division of such charges;

(i) Competition in communication service with the points involved;

(j) The financial effects upon Mackay Radio and Telegraph Company and the other United States telegraph carriers serving the four countries involved, of a grant of one or more of the above applications;

(2) To determine, if the application of Mackay Radio and Telegraph Company to communicate directly with The Netherlands, is denied, whether public interest, convenience, or necessity would be served by authorizing Mackay Radio and Telegraph Company to communicate with The Netherlands via its relay station at Tangier, in the light of all the pertinent factors specified above in paragraph number (1), and, in addition, the following factors:

(a) The alternate routes available to the applicant for the movement of traffic destined to The Netherlands;

(b) The division of tolls and speed of service on telegraph traffic between the United States and The Netherlands moving over such alternate routes, as

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compared with the division of tolls and speed of service on such traffic moving via Tangier;

(c) The promotion of the most efficient and economical use of frequencies and facilities in furnishing radio-telegraph service between the United States and The Netherlands;

IT IS FURTHER ORDERED, That Mackay Radio and Telegraph Company and RCA Communications, Inc. are made parties respondent herein; and that any other United States carrier engaged in furnishing foreign telegraph communication [138] service may intervene and participate fully herein, provided that within twenty days of the date hereof, it files a written notification of its intention to do so;

IT IS FURTHER ORDERED, That the hearings herein shall be held at the offices of the Commission at Washington, D. C., beginning at 10:00 a.m. on the 8th day of March, 1948.

NOTICE IS HEREBY GIVEN that Section 1.857 of the Commission's Rules and Regulations is not applicable to this proceeding.

By the Commission

/s/ T. J. SLOWIE
T. J. SLOWIE
Secretary

(SEAL)
JRB

Commissioners Jones and Sterling dissent from so much of the Order as provides for the termination of the operation by Mackay Radio and Telegraph Company of its direct radiotelegraph circuits with Portugal and Surinam, being

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of the opinion that since Mackay Radio and Telegraph Company is presently operating direct service to these two countries, the authorizations therefor should be continued in effect pending the disposition of the hearing herein.

[139]

February 9, 1948

In the Matter of Mackay Radio and Telegraph Company. Applications for Radiotelegraph Circuits between the United States and Finland, Portugal, Surinam and the Netherlands. Docket No. 8777.

Receipt of copies of the attached order and service thereof is hereby acknowledged.

MACKAY RADIO & TELEGRAPH COMPANY

By /s/ H. M. BROWN

RCA COMMUNICATIONS, INC.

By /s/ F. P. GUTHRIE

Transcript.

[206] MARION H. WOODWARD, was called as a witness for and on behalf of the Federal Communications Commission, and having been first duly sworn, was examined and testified as follows:

[207] *Direct examination by Mr. Werner:*

[208] Q. Will you please state your occupation? A. Assistant Chief Engineer and Chief of the Common Carrier Division, Engineering Department, Federal Communications Commission.

Q. Would you state, Mr. Woodward, what list B purports to show? [209] A. List B shows information with respect to Commission actions on applications during the period from its inception, July 11, 1934, until April 1, 1948.

Q. Mr. Woodward, would you take this list B or Exhibit 7, and summarize the actions which are shown in that exhibit? A. As you can see from the exhibit, very few applications were acted upon by the Commission until the war commenced in Europe. That will start at item 7.

Prior to that time, as I said, very few applications were acted upon. After that time, of course, there were numerous applications filed to war zone points, and then after the war was over the numerous applications were acted upon for the restoration of circuits that had been in operation before the war and which were suspended because of the war.

Q. I think it will be noticed, Mr. Woodward, that list B indicates that from 1939 on until recently, every application which was filed was granted.

In connection with that, were there any policies of the Board of War Communications which relate to that fact? A. Prior to the United States entrance into the war, the Board of War Communications was interested in the

Marion H. Woodward, for Appellee-Direct.

communications circuits from the United States to foreign countries. They had a policy that they actually put out in 1942. The policy had been somewhat in effect before that, [210] but it wasn't really enunciated until January 1942, that the United States should have duplicate or parallel circuits between the United States and all countries in the world, especially to those important countries in the war zone.

At the beginning they preferred to have parallel circuits and then in April 1942 the policy was modified to permit the establishment of additional facilities whether by duplicate circuits or forked circuits.

Q. Mr. Woodward, I wonder if you would give us typical examples of what you mean by "parallel or forked circuits," as indicated by the Board of War Communications' policy you just testified to? A. Parallel circuits would be circuits operated by two or more American companies to separate points in the same country abroad, or with separate operating agencies abroad.

For instance, an example would be from San Francisco to Australia, if one company operated a circuit from San Francisco to Sydney and the other company operated a circuit from San Francisco to Melbourne, they would be considered as parallel circuits.

A forked circuit on the other hand, is when two or more American companies operate from the United States to the same point with the same administration in the foreign country.

[211] An example of that is from New York to London, where RCAC, Mackay Radio, and Press Wireless, all operate with the same administration in England, Cable and Wireless.

Q. I believe you brought your testimony with respect to policies of the Board of War Communications up to 1943?

A. Yes.

Q. Would you go on from that point? A. In January 1943, the Board said in effect, "We don't want any more

Marion H. Woodward, for Appellee—Cross.

duplicate or parallel circuits, because of the shortage of manpower, the shortage of equipment, the shortage of frequencies." They recommended at that time that the Commission not pass upon any application without first referring it to the Board and getting the Board's advice in respect thereto.

The Board's advice was usually that one company should be authorized, or they were in favor of the establishment of a single circuit.

Q. How long did that policy remain in effect? A. That remained in effect until about 1945. At that time, the Board of War Communications advised that the joint Chiefs of Staff were interposing no objection to more circuits than appeared to the Board to be necessary provided that no additional facilities or frequencies would be required for the establishment of such circuits.

Then in 1946 the Board advised the Commission that the Military had no more interest in the establishment of [212] commercial circuits except that they requested that any new use of frequencies be cleared with the Army or the Navy as the case may be before the authorization.

Q. When you speak of the Board of War Communications, I take it you are referring to that body which took over the functions, or which superseded the Defense Communications Board which was established in 1940, is that correct? A. That is right. The Defense Communications Board was the Board's first name and soon after we entered the war it was changed to the Board of War Communications.

[215] *Cross examination by Mr. Kennedy:*

Q. Mr. Woodward, did I understand you correctly to say that prior to our entrance into the war, and for some time thereafter, the Board of War Communications adopted a policy of desiring duplicate circuits to all countries or to the principal countries of the world? A. I said that yes.

Marion H. Woodward, for Appellee—Cross.

[216] Q. Did that policy apply only to zones of the world which were involved in the war, or to the entire world?

A. It applied principally, Mr. Kennedy, to the zones that were involved in the war. For instance, in South America, the Board of War Communications, before our entrance into the war had very little to say. It was in connection with Europe. The Germans were invading, of course, the Western European countries.

[219] In the case of the war zone in Europe, they expected that the invasion would take place over a large scale.

At the time it was expected that there would be one Army in one part of the country and another Army down in the [220] other part of the country. These war circuits were primarily not for communications within the country.

It was for communications with the press that were following the American Armies, and for handling soldier traffic to and from the American soldiers.

[226] Q. Mr. Woodward, referring to Exhibits 6 and 7, I wish to call attention to a few of these countries.

On Exhibit 6, item 12, Colombia. I believe that exhibit shows there that as of July 11, 1934, when the FCC took over, Mackay Radio and RCAC, and Tropical, were operating circuits to Colombia, is that correct? A. That is right.

Q. The exhibit doesn't show, but will you tell me please who each of these companies were operating with? A. Mackay Radio was operating with All-America Cables. RCAC was operating with Marconi Wireless of Colombia, a corporation in which it had 50 per cent ownership, I believe.

[227] Tropical Radio in the early days—item 3 under No. 12—Tropical Radio had since 1912 operated with its own stations down in Colombia. They had a concession.

Marion H. Woodward, for Appellee—Cross.

They were operating to Santa Marta. That concession expired sometime in 1939 and was not renewed.

In 1923 Tropical Radio was authorized by the Department of Commerce, I suppose in those days to communicate with the same correspondent of RCAC, Marconi Wireless of Colombia.

Q. So, going back as far as 1923, the Marconi Company in Colombia, of which you say RCAC owned 50 per cent—

Q. (continuing) —authorized a forked circuit to the United States. That is one fork to RCAC and the other fork to Tropical Radio, is that correct? A. That is right.

Q. Now, turning to Exhibit 7, item 35 shows what, please? A. Item 35 shows that Globe Wireless was authorized in 1941 to communicate with Colombia from San Francisco and from New York.

Q. Who was it authorized to communicate with? A. With the Colombian Government.

Q. Do you know whether the Commission held a hearing on that or not—and that is the Federal Communications [228] Commission, isn't it? A. No, it did not.

Q. So that made an additional circuit from United States to Colombia? A. From New York. There was no circuit from San Francisco at that time.

Q. That made three companies, three American carriers, operating from the United States to Colombia? A. Four.

Q. Now, following on through Exhibit 7, we next find Colombia in items 103 and 104. Will you please explain item 103? A. At that time RCAC filed an application to communicate with the Colombian Government. That application apparently was granted on 2/17/42 from San Francisco—I beg your pardon. That was not the Colombian Government. That was an application to communicate with a Marconi station in Colombia, out of San Francisco. RCAC at that time was operating out of New York.

Q. That was Marconi Company? A. That is the Marconi Company, yes.

Marion H. Woodward, for Appellee—Cross.

Q. So, as of that late date in 1942 the Marconi Company in Colombia, of which you say RCAC owned a 50 per cent interest, permitted a third fork to its United States— A. As far as Colombia was concerned, they were [229] operating to three separate points in the United States. Two of them were operated by the same company and the other point was operated by a second company.

Q. Three points would make it three forks, is that correct? A. That is right, as far as Colombia is concerned.

Q. What is item 104? A. 104 is an application of Tropical Radio to communicate from Miami to Bogota. Prior to that time Tropical Radi had been operating from New Orleans or from Boston, and this is an application to communicate from Miami to Bogota.

Q. Is that also with the same Marconi Company? A. That is also with the Marconi Company.

Q. Does that then make four forks to the Marconi circuits to the United States? A. So it would appear here.

[231] Q. Now, Item 197. A. I might say, Mr. Kennedy, I think I gave you a piece of incorrect information just a little while ago in regard to the Tropical Bogota authorization: that was one of those earlier things. You asked me, from Miami to Bogota, was that a fourth circuit as far as Colombia was concerned.

I think that particular item there of Tropical from Miami to Bogota was with the Colombian Government.

Now, this item that you asked me about now—what is the number, Mr. Kennedy?

Q. 197. A. Item 197 is a second circuit as far as the Colombian Government is concerned with Tropical Radio. They had already operated a circuit with Tropical to Miami. This is a circuit operated with Boston.

Q. That was authorized when and opened when? A. That was authorized December 5, 1944 and opened January 15, 1945.

Marion H. Woodward, for Appellee—Cross.

Q. Did the Commission require a hearing before granting [232] any of those applications that you have described?

A. No, sir.

Q. Turn to your Exhibit 2, please.

Give us a picture as to the circuits that are now operating by each of the companies between the United States and Colombia, and with which operating agencies at the Colombian end. A. I think you will find that much better in Exhibit 8. It has got all that information spelled out on that particular thing.

Q. All right. I will be glad to accept your suggestion.

A. On page 2 of Exhibit 8, item 16, at the bottom of the page shows that information in detail.

Q. Will you, for the sake of the record just say what it is? A. RCAC is operating from New York to Bogota and from San Francisco to Bogota, connecting with the government station in Colombia.

Tropical Radio is operating from Miami and Boston to Bogota, connecting with the same administration in Colombia.

Mackay Radio is operating a circuit from New York to Bogota, connecting in Bogota with All-America Cables and Radio, Inc.

Q. Now, according to your definitions of duplicate [233] or parallel circuits and forked circuits, is it correct to say that the circuit of Mackay Radio at this end and All-America Cables and Radio at the Bogota end is a duplicate or parallel circuit with the circuit of RCA Communications at New York, and the Colombian Government station at the Colombian end? A. That is right. You can call it typical. It is the highest type of parallel circuit where you have got two separate administrations operating at each end.

Q. But on the other hand, the circuits from Bogota to the United States, the circuits of RCAC at New York, RCAC at San Francisco, Tropical Radio at Boston and Tropical Radio at Miami are forked circuits? A. As far as Colombia is concerned.

Marion H. Woodward, for Appellee—Cross.

Q. And there are four forks from Colombia? A. Right.

Q. Now, Mr. Woodward, will you please then again return to Exhibit 6 and item 14, and give us the circuits that existed in July 1934 between the United States and Cuba?

A. We have Mackay Radio operating to Camaguèy.

Q. Will you permit me to go back for one further question.

In addition to the radio circuit between the United States and Colombia which you have already described in [234] some detail, what cable facilities are there between the United States and Colombia? A. All-America operates at numerous points in Colombia. It has cables down along the North Coast of South America, connecting into Panama, and has cable facilities between that point and the United States.

Q. And those are shown, I take it, in your Exhibit No. 1? A. That is right. Each point the All-America serves is shown in that cable map.

Q. Will you then return to my previous question on item 14 of Exhibit 6. A. All right.

Mackay Radio operated at that time to Camaguey. I think the name of that company was the Radio Corporation of Cuba.

Q. That is correct. A. RCAC operated, with a subsidiary, in Havana.

Mr. Werner: Its own subsidiary?

The Witness: Its own subsidiary.

The name of that company is shown in Exhibit 8—Cuba Trans-Atlantic Radio Corporation.

Press Wireless was operating with a press company in Cuba. The name of that company is also shown. I think the name of that company has been changed sometime during the intervening period, but it was still, as I understand [235] it, a Press Wireless subsidiary. It is now known as Press Wireless of Cuba. I think it was Transradio Press . . .

Marion H. Woodward, for Appellee—Cross.

[238] Q. Then to recapitulate, will you give us please the radiotelegraph circuits that are now operating between the United States and Cuba with the operating agencies at each end? A. That is shown on Exhibit 8 on page 3 item 18. Do you care to have me read it into the record, Mr. Kennedy?

Q. Please. A. From New York to Havana, Globe Wireless, operating with the Cuban Wireless Corporation. From New York to Havana, RCAC connecting with the Cuba Trans-Atlantic Radio Corporation.

From New Orleans to Havana, Tropical connecting with the same correspondent.

From New York to Havana, Press Wireless operating with Press Wireless of Cuba.

Tropical Radio from Boston to Preston, United Fruit Company. Tropical Radio also from Miami to Preston.

It is an inactive circuit, that is an alternate circuit, connecting also with United Fruit. Mackay Radio from New York to Camaguey as shown here as an inactive circuit. The circuit has ceased to operate.

[239] Q. The license is canceled?

Mr. Werner: The license has either been canceled or there is an application requesting it.

A. It was on the way to being canceled. I don't think it was canceled as of the date of this. From New York to Havana it was Mackay Radio operating with the Radio Corporation of Cuba and from San Juan, Puerto Rico there is an alternate circuit to Havana operated by RCAC.

By Mr. Kennedy:

Q. With respect to all of those circuits, I believe you have said there has been no hearing required by the Commission? A. That is right.

Marion H. Woodward, for Appellee—Cross.

Mr. Wendt: Including the Mackay circuit?

The Witness: Including all the circuits.

By Mr. Kennedy:

Q. Before leaving Cuba, will you please describe the cable facilities between the United States and Cuba in addition to the radiotelegraph circuits? A. The Western Union Telegraph Company operates cable circuits from New York down through Miami and Key West into Havana. They could, if they wish throw in 6 to 8 channels operating 60 words a minute serving Havana.

Q. What do you mean by channels? A. Several telegraph circuits [240] there may be as many as three—operating over a single cable conductor. To all intents and purposes each of them could be treated as a separate communications circuit but it is channeled over a single circuit—one cable could carry as many as three channels into Cuba.

In addition to that, they have facilities that operate directly from Miami down to Havana. All-America Cables have a cable circuit operated from New York down to Havana, and they have three cables in their normal South America cable chain that operates down to Fishman's Point in the eastern part of the Island of Cuba.

They have cables, of course, connecting Cuba with the West Indies, and Cuba with Central America and by the connections that they made they serve the west coast, and the east coast and the north coast of South America.

[241] Q. In other words, the United States Government and the British Government, and I assume the Colonial Government of Bermuda, agreed to the duplicate operation of circuits between the United States and Bermuda? A. That is right.

Q. That is essentially so, isn't it? A. That is right.

Marion H. Woodward, for Appellee—Cross.

Q. Just one further item in your Exhibit 8. Will you please look at page 2 with reference to Brazil? A. Page 2 of Exhibit 8.

Q. Exhibit 8, item 10. A. Right.

Q. I take it this means the existing circuits as of today—radio telegraph circuits between the United States [242] and Rio de Janeiro, Brazil? A. That is right, as of the date of this exhibit which was April 1, 1948.

Q. Will you please read into the record those circuits and the operating agencies at each end? A. Between New York and Rio, RCAC operates with the Radio Braz.—Compania Radiotelegrafia Brasileira. This Radio Braz. is one of the consortium companies in which RCAC has roughly a 25 per cent interest.

Mackay Radio operates with the company known as CRIB. Companio Radio-Internacional de Brazil.

All these things are shown in item 10 of Exhibit 8 on page 2. CRIB is an IT and T Company. Press Wireless operates from New York to Rio with a Press Wireless affiliate, Teleradio Brasileira. RCAC operates a circuit from San Francisco to Rio. This circuit as we understand it is not very often used. The same correspondent as they have out of New York—the consortium company.

In addition to that, Tropical Radio operates a circuit from New Orleans to Rio with the RCAC's correspondent in Rio.

[244] Q. In addition to these Radio circuits—first, let me ask you, to clear the record: the circuit from Radio Braz.—or circuits from Radio Braz.—to RCAC, New York, to RCAC, San Francisco, and to Tropical, New Orleans, were split three ways, a three pronged fork? A. From Brazil.

Q. And the other operating entity is a corporation in which you said RCAC owns approximately 25 per cent? A. Right.

Marion H. Woodward, for Appellee—Cross.

Q. This addition to those radio facilities briefly [245] describe what cable facilities to Rio are available? A. All-America has cables that come down through Cuba and Panama and down the West Coast of South America, crossing from Chile over to Argentina, connecting from Argentina and Uruguay—one cable connects to Rio, the other connects at Sao Paulo—or is it Santos?

Western Union has a cable circuit that runs by land line from New York to Miami by cable from Miami to Barbados, where it connects with the Cable and Wireless Company, the Western Telegraph Company, at Barbados, down to the northern coast of Brazil, and by the facilities of the C and W affiliate, to serve numerous points in Brazil. The Cable maps will show the Western Union to Barbados. It doesn't show the C and W facilities beyond Barbados.

Q. Mr. Woodward, I have just had you testify as to some few instances where there are two, three, four or more, forked radiotelegraph circuits and parallel radiotelegraph circuits between the United States and certain countries. There are other examples of such in your exhibits here, are there not? A. China, Argentina, Chile, any number of places.

By Mr. Margraf:

[257] Q. With respect to the authorization of RCA to communicate with Italy, which is item No. 188 on Exhibit 7, was that circuit a war circuit which was granted at the request of the military authorities? A. That is right, yes.

Q. Is it true that prior to the war RCA for many years had had a circuit with Italy? A. That is right.

Q. And is it true also that prior to the war—or rather in 1940—Mackay had been denied a circuit to Italy after hearing at the Commission? A. That is right.

Marion H. Woodward, for Appellee—Cross.

[261] Q. Do you know, in connection with the operations of American companies in Colombia, whether the Colombian correspondent used the same transmitting equipment to communicate with RCA and with Tropical? A. No, I don't know that.

[269] Q. Mr. Woodward, I want to clarify my own mind as much as anything else. I believe you said that the early policy of the Board of War Communications was to authorize or have the Commission authorize duplicate circuits—and I take it you include in that forked circuits or additional circuits to all countries, or important countries, in the world, is that correct? A. That is right.

Q. Without any restrictions? A. That is right. I might go back and say a little further than that, Mr. Kennedy: that was setting forth what was actually the way the Commission was acting as of that time.

You can see that the Board of War Communications, as I said, the Board of War Communications directive came in January 1942 and you can look at Exhibit 7 and you will find that in numerous cases the Commission had granted parallel circuits in certain cases, even forked circuits, prior to the time that the Board of War Communications put in writing [270] what the policy of the Commission was. You might say the BWC confirmed what the Commission was doing.

Q. The point I want to clarify in my own mind is that there were no restrictions in that policy as to whether they were duplicate circuits or forked circuits or split circuits or any other kind. The point was to get additional circuits to the foreign countries, is that correct? A. That is right.

Q. I believe you said further that when the policy was changed in early 1943, I believe— A. Yes.

Q. (Continuing) —was due to the shortage of frequencies which were needed during the war, is that correct?

Kenneth E. Stockton, for Intervenor—Direct.

A. Frequencies, manpower and equipment. It was very difficult to get all three of them.

[311] By Mr. Gibbons:

Q. Will you identify yourself for the record, please?

A. My name is Kenneth E. Stockton.

Subject to the approval of the FCC to which application is being made, I am President of American Cable and Radio Corporation and two of its operating subsidiaries, namely All-America Cables and Radio, Inc., and the Commercial Cable Company, and I am a director of Mackay Radio and Telegraph Company. I formerly held interlocking positions in some of these companies several years ago with Commission approval.

[312] Q. How long have you been associated with the American Cable and Radio Corporation and its operating subsidiaries, Mr. Stockton? A. From 1940 to early 1945 I was Chairman of the Executive Committee of American Cable and Radio Corporation. In 1945, and until my election last month as President of the American Cable and Radio Company, I served in Europe as the Divisional Vice President of the International Telephone and Telegraph Corporation.

Q. Prior to 1940, what business were you engaged in?

A. I joined the Legal Department of IT&T Corporation in 1935 and was thereafter associated with the IT&T System in various capacities, became a Vice President of IT&T in 1935 and a member of the Board of Directors in 1939.

Q. Are you informed generally as to the early history of Mackay Radio and its efforts to establish overseas communication circuits? A. Yes; over a period of years in the early 1930s while I was in Europe I was aware of negotiations which were under way in Europe and elsewhere for the establishment of radio circuits by Mackay Radio.

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Q. What was the situation as respects carriers engaged in international radiotelegraph communication before Mackay entered the field?

[313] A. RCA had practically a monopoly of international radiotelegraph business. I would quote from page 5 of a letter of the Federal Trade Commission—

—submitting its report to the House of Representatives in response to House Resolution 548, 87th Congress, Fourth Session, generally known as the Report of the Federal Trade Commission on the Radio Industry. The quotation is:

“The Radio Corporation is the only concern now engaged in transmitting and receiving radio messages between the United States and foreign countries and contends that in order to function properly it must of necessity secure a monopoly in this field. The Company has secured a virtual monopoly and controls all the high-power stations with the exception of those owned by the Government. In addition, it has entered into traffic agreements with the various foreign governments and radio companies, the majority of these agreements providing that all messages intended for the United States shall be transmitted only through the facilities owned by the Radio Corporation of America. Agree- [314] ments of this character have been made with Marconi's Wireless Telegraph Co. (Ltd.), covering the British possessions, and the Governments of Norway, Germany, France, Poland, Sweden, and The Netherlands. An agreement of a similar character between the Marconi Co. and the Japanese Government was assumed by the Radio Corporation when it purchased the assets of the Marconi Wireless Telegraph Co. of

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America and traffic by radio between the countries was established. . . ."

A. (Continuing) I might also quote at this point from the Federal Communications Commission before the Senate Subcommittee in 1945 at page 249 of the hearings on Senate Resolution 187:

"Here it is to be noted that prior to 1929, RCAC, or its predecessor company, was the sole American carrier engaged in world-wide radiotelegraph communications. With the creation of the Mackay Radio companies in 1929 a competitive situation was thus [315] created."

Q. When and how did Mackay commence its activities in international radiotelegraph operation? A. In 1926 the Mackay Companies, the parent of the Commercial Cable Company, organized Commercial Wireless, Inc., a Delaware corporation, to engage in radiotelegraph operations on the Atlantic Coast, the name of which company was later changed to Mackay Radio and Telegraph Company (Delaware).

This company started out by leasing the station at Sayville, Long Island, which the United States Navy had operated after taking it over from a German company during the First World War.

In September, 1927, the Mackay Companies organized Mackay Radio and Telegraph Company of California, which acquired the communications operations of the Federal Telegraph Company of California.

Federal had commenced commercial radiotelegraph operations on the west coast of the United States in 1911 and had built up quite a worthwhile business in that area and had established the first transoceanic commercial cir-

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cuit, between San Francisco and Honolulu, in 1912. It also was engaged in ship-to-shore radiotelegraph operations.

In 1928 the Mackay Companies, with its radio, wire [316] telegraph and ocean cable subsidiaries, were acquired by the International Telephone & Telegraph Corporation.

[319] Q. Mr. Stockton, now, specifically, with reference to The Netherlands, one of the countries you mentioned, when were negotiations opened with that country on behalf of Mackay Radio? A. They were commenced early in 1931.

Q. Refer to the two letters dated May 15, 1931 and June 11, 1931 as Exhibits 71 and 72, respectively, for identification. Will you describe them please? A. Exhibit No. 71, the letter dated May 15, 1931 is a copy of a letter to the Postmaster General at The Hague, proposing, on behalf of Mackay Radio and the International Telephone & Telegraph Corporation, the establishment of radio circuits between The Netherlands and the United States and Argentina.

The letter dated 112 June, 1931—the reply from the [320] Director General of Posts, Telegraphs and Telephones states that, while the Administration is interested in the proposal, it has no freedom of action in the matter, having already made agreements with RCA in New York and Transradio Internacional Compagnia Radiotelegraphica Argentina, which preclude the possibility of entering into similar agreements with competing companies for the same destinations.

Q. Who is the Transradio Company referred to? A. I understand it is an Argentine Corporation owned approximately one-fourth by RCA or RCAC and one-fourth each by French, English and German interests.

[325] Q. Mr. Stockton, at this point will you describe Exhibit 75 for identification? A. This is a copy of the Amendment to the Amended and Supplemental Petition in

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the antitrust proceeding entitled, United States of America, Petitioner, *vs.* Radio Corporation of America, *et al.*, Defendants, in the District Court of the United States for the District of Delaware, File No. in Equity No. 793.

Q. Did the allegations in the Petition refer to RCA contracts with the three countries involved in this proceeding? A. Yes, at the top of Page 4 reference is made to the RCA contracts with The Netherlands, Portugal and Surinam, among several others.

[326] Mr. Gibbons: On that, without any interpretation by the witness, may I ask that the witness read the paragraph "A" and the second page of the exhibit?

A. "Said defendants, Radio Corporation of America and RCA Communications, Inc., and their subsidiaries are hereby perpetually enjoined from claiming or asserting that any of their foreign traffic or communication agreements, arrangements or understandings with governments, companies or others prevents or prohibits the other contracting party thereto (a) from establishing, or permitting to be established, with any other person or persons, such radio circuit or circuits to or from the United States, its territories or possessions (either direct or indirect) as such other contracting [327] party may desire, in addition to or other than those provided for by the aforesaid agreements, arrangements, or understandings, or (b) from transmitting, or permitting to be transmitted, by or over such other or additional circuit or circuits messages which may be specially so routed by the sender.

[331] Q. Would you refer to the exhibits marked 77 through 82, and describe whether those exhibits indicate

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the action taken by the Federal Communications Commission to which you have just referred? A. Exhibit No. 77 is a certified copy of an excerpt from the Minutes of the Commission designating for hearing the applications of RCA Communications, Inc. for renewal of licenses at the several points set forth, and renewing the same temporarily for a period of three months.

Q. Exhibit 78 now. A. Exhibit 78 is a certified copy of the FCC notice dated November 20, 1942, designating the RCA applications for hearing, and setting forth the reasons therefor.

Exhibit 79 is a certified copy of an excerpt from the Minutes of the Commission's meeting of February 16, 1943, approving and directing the transmission of a waiver by RCA to all of its foreign correspondents with whom it has restrictive contracts.

Q. No. 80. A. No. 80 is a certified copy of letters dated March 5, 1945 from RCA Communications to the Director General of Administration of Posts and Telegraphs, Eindhoven, Netherlands.

No. 81 is a certified copy of a letter dated April 13, [332] 1943 from RCA Communications, Inc. to Companhia Portugeza Radio Marconi, Lisbon, Portugal.

Q. In each of the letters, namely, Exhibits 80, 81 and 82, did RCA Communications indicate a waiver of certain contractual rights? A. The third paragraph of the letter reads: "The effect of the above new condition in our licenses is the elimination of our contractual right to your unrouted traffic under our mutual traffic agreement, and we therefore inform you that you may consider this requirement of the agreement as being waived by us."

[334] Q. Mr. Stockton, do you have any observations to offer with respect to the three applications which are here before the Commission on behalf of the Mackay Radio

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to communicate with The Netherlands, Portugal, and Surinam? A. These applications have unusual importance for us for several reasons.

In the first place it is practically the first time that there has been a question squarely raised before the Commission on a contested proceeding since the war.

From our point of view we feel that the granting of these [335] circuits is of the highest importance to Mackay, both in its own interest and in the public interest, because it not only gives them a strong competing position for these three countries, but it also has an enormous effect on the entire competitive position of Mackay as a network of telegraph circuits and of the American Cable and Radio Network of both Radiotelegraph and Cable circuits.

We feel that in order to be truly competitive we must offer a competing service to every competitor on every side. It is just as if you had two grocery stores, one on each side of the street. One can only offer a limited variety of food and the other can offer every brand, that trade goes to the carrier that can offer to take the traffic to any point, so that not only these three but other circuits that will come up in the future, are vitally important to the creation of a complete radiotelegraph network of Mackay which will be fully competitive with the RCA network.

In the second place, from the standpoint of the American Cable and Radio system, it has a great importance, because the Commercial Cable Company doing business directly with this country—Holland—which formerly did business, and had vias from Portugal, so it could solicit business to be sent via Commercial from Portugal to the United States, it has found out to its cost that while it is competing with a radio circuit on the other side, where the Administration [336] is its competitor in the foreign country that the Administration exerts the various means at its disposal to get the maximum amount of business for the radio circuit at the expense of the cable circuits.

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Other witnesses will bring out how, in Portugal, after Commercial was deprived of the possibility of canvassing for its own vias, by the action of the Portuguese Government, for the benefit of the Marconi Company, our outbound traffic from Portugal dropped down almost to the vanishing point.

We still have a sort of a survival by grace, by an agreement with Western Union and the Cables and Wireless affiliate, but the amount of traffic we get outbound from Portugal is very small, and an American Cable Company with its terminals in a foreign country, where that foreign country has radiotelegraph circuits to the United States, always is in danger of having the circumstances under which it operates become more and more prejudicial, so that it is not only in order to give Mackay a direct route, but in order to, in the long run, protect the Commercial Cable, and also in South America, to protect the All-America Cable that we have to establish, we feel, a network where we can offer to the customer both facilities of cable and radio; that gives us greater flexibility.

If sun spots or other reasons cause hold-ups or difficulties in the radio circuit, the matter can be handled [337] promptly over the cable circuits. If we have cable interruptions as happened in the case of Bogotá during this last convention, our cables were interrupted but we were the only radio circuit that carried on for a considerable period of time.

If we had been limited to just the cables, the whole Bogota Conference would have been cut off from communication with Washington.

Also, I should say, in addition, we believe that a direct Mackay circuit to Portugal, and The Netherlands, and Surinam, will have an improvement in the time of transmission and the handling and accuracy of transmission. That will be more brought out by another witness later on.

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Mr. Wendt: On that last point, Mr. Stockton, you are really not testifying other than to advise the Commission that another witness will testify, is that correct?

The Witness: Yes, that is right. I said it was my belief. I didn't say it was a fact.

[350] C. E. SCHOLZ, was called as a witness on behalf of Mackay Radio and Telegraph Company, having been first duly sworn, was examined and testified as follows:

[353] By Mr. Gibbons:

Q. Mr. Scholz, will you identify yourself for the record please? A. My name is Carl E. Scholz. I am a Vice President of Mackay Radio and Telegraph Company, Inc. since September, 1945, and at the moment acting as Chief Engineer in the absence of Mr. Haraden Pratt, who is ill.

Q. Are you associated with any of the other American Cable and Radio Subsidiaries? A. Yes, with the All-America Cables and Radio, Inc., principally in relation to All-America's radio operations in Central and South America.

Q. Are you associated with any of the Operating Companies of the International Telephone and Telegraph Corporation? A. Yes, I am a Vice President of the Radio Corporation of Puerto Rico since January 1936.

Q. What is the nature of your duties, Mr. Scholz? A. For a number of years, I have been Assistant to the Vice President and Chief Engineer, assisting in the engineering, design and construction work for the Mackay Radio and Telegraph Company, Inc. and the All-America [354] Cables and Radio, Inc. Up until approximately a year ago, I was also actively involved in the engineering problems in connection with the IT&T Radio Operating Companies in South American countries, Cuba and Puerto Rico.

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Q. Will you relate briefly, Mr. Scholz, your educational and business background. A. I was graduated from Stanford University, School of Engineering in 1917 and in the early part of that year entered the employ of the Federal Telegraph Company at Palo Alto, California as an Engineer and remained there until the early part of 1918 when I was sent East by the Company to Annapolis, Maryland, to assist in the installation of the high power arc equipment furnished by the Company to the Navy and primarily to design and erect the antenna to be used with this equipment.

This was one of a number of high powered continuous wave stations which the Navy contracted for with the Federal Telegraph Company after a successful demonstration by Federal at Arlington, Virginia of the advantages of continuous wave operation, an important development in those early radio days which Federal virtually pioneered.

In the early part of 1919, I was sent to Puerto Rico to have charge of a similar installation for the Navy Department at Cayey, which included not only the installation of the Federal Equipment but the design and erection of the [355] antenna system for use with this equipment.

Upon completion of that project, I returned to California and for several years was engaged in the engineering activities of the Federal Telegraph Company.

I had an active part in the planning and establishment of the Federal's new stations on the West Coast, the stations originally established by Federal having been sold to the Navy just prior to the first World War.

During the first War and shortly thereafter Federal had continued its domestic intercity operations between several cities on the West Coast by leased wire lines.

I might say, as a matter of interest at this point, that in 1920 and before Federal had gotten its new radio stations established, the Bell System withdrew its wire line leasing privileges on short notice, making it necessary for Federal to obtain injunctions from the Federal Courts per-

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mitting continued use of its leased facilities until it could construct radio stations to carry on its operations in place of the wire lines.

In September 1924, I was made Chief Engineer of the Federal Telegraph Company and held that position until the latter part of 1928, meanwhile having left the communication operations of the company, which were taken over by Mackay, but continued as Chief Engineer of the engineering and manufacturing activities of Federal and also, for a [356] brief period, was associated as Chief Engineer with Kolster Radio Corporation and the Brandes Products Company, then engaged in the manufacture of broadcast receivers at Newark, New Jersey.

In June, 1929, I entered the employ of the International Telephone and Telegraph Corporation as an Engineer and my first assignment was to establish a radio station for the All-America Cables and Radio, Inc. at Lima, Peru.

Following the completion of this station, I was transferred to Rio de Janeiro to establish a radiotelephone station now operated by the IT&T subsidiary company, known as Companhia Radio Internacional do Brasil.

When that project was completed in 1931, I returned to New York and since that time have been engaged in engineering work for the IT&T subsidiary radio companies, including All-America Cables and Radio, Inc. and Mackay Radio, but in recent years my work for the most part has been principally for Mackay Radio and All-America Cables and Radio.

I am a full member of the American Institute of Electrical Engineers since May 1926, a full member of IRE since April 1926, a senior member since October 1943.

[390] Q. With regard to your frequency shift and printer operation, do you want to tell us to what extent that [391] operation has been carried out on your circuits? A. If we refer to the map on pages 2 and 3 of the

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album, and first looking at the westcoast circuits, we have employed frequency shift and printerized the San Francisco-Honolulu, San Francisco-Manila, and San Francisco-Shanghai circuits. These are printerized in both directions. Nanking and Tokyo are on frequency shift morse westbound and on on and off keying eastbound.

[393] Q. Do you want to continue describing the extent to which printer and frequency shift operation, either morse or printer, has been introduced on your circuits from New York? You might want to follow page 3 of the album. A. Yes. The first circuit operated by Mackay Radio on frequency shift and printer was the New York-Tangier Tangier-Moscow circuit which was placed in operation the early part of 1946.

Since that time, with the development and manufacture of our own equipment, in addition to the three trans-Pacific points I spoke of earlier, we have printerized our circuits with Bogota, Paris, Rio de Janeiro, Cairo, and Frankfurt.

In addition, we have printerized presscast circuits to San Juan, Puerto Rico and to Honolulu.

We have also provided frequency shift keying for morse operation on a second circuit to Bogota, the New York-Tangier link of the automatic relay to Bombay, Lima, London, Nanking, and Tokyo, as well as frequency shift morse operation on our New York-San Francisco link in the automatic relay of presscast at San Francisco to the Far East.

As I have mentioned, the printer circuit, New York to Bogota, it might be of interest to know that this circuit was put on [394] frequency shift and printer to handle the State Department traffic in connection with the Inter-American Conference and this circuit was the only means of communication to and from Bogota during the recent uprising.

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To meet the requirements of our government, the facilities were established for communication directly from the State Department in Washington to the U. S. Embassy at Bogota. These facilities were arranged to handle the non-conventional code or scrambled tape traffic of the State Department and also to provide a full conference printer circuit between the officials at the U. S. Embassy at Bogota and the State Department in Washington.

[396] Q. Now, Mr. Scholz, let's turn directly to the three circuits involved here, first taking up Lisbon. I believe we operated that circuit for a brief period of time, did we not? A. Yes. We opened the circuit on October 20, 1947 a week after it was authorized and the circuit was operated continuously until January 2, 1948 when the circuit was closed because of the strike. The Lisbon circuit was reopened on February 5, 1948 and continued in operation until midnight, February 12-13, when the circuit was closed as required by the Commission's order.

Q. Prior to the opening of the circuit in October, did Mackay take up with the Portuguese Marconi the question as to how the circuit would be operated and the services [397] that would be offered if the Commission authorized Mackay to establish the circuit, and you might refer to Exhibit marked 85 for identification? A. Exhibit 85 is a copy of a letter dated August 22, 1947 to the Chairman and Managing Director of the Portuguese Marconi Company, setting forth, in general, the company's plans with regard to expansion and modernization of its operations and requesting the views of Portuguese Marconi concerning operating methods, types of service, etc.

Q. Did Mackay hear from Portuguese Marconi in reply to that inquiry and will you refer to and describe Exhibit Number 86 for identification? A. Yes. Exhibit 86 is a copy of a letter dated October 18, 1947 received from Portu-

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guese Marconi explaining that, as of that time, they could work only the ordinary morse without frequency shift, but their intention is to printerize our proposed Lisbon-New York circuit, utilizing frequency shift in the near future. They indicated that no multiplex operation was envisaged at that time. With regard to program service, they indicated a readiness to handle that at once and expected to be ready for photo-service when they obtained some Times Telephoto equipment.

With regard to the extent of use of the two non-telegraph services, it was indicated that no great use of the [398] program service was anticipated and Portuguese Marconi could not predict the extent of use of radiophoto service as they have not as yet had such service between our two countries.

Q. Now, will you describe how the Lisbon circuit was operated during the period of time that Mackay had it in operation and tell us what type of operation you propose for the future handling?

Mr. Wendt: Before you leave that exhibit, Mr. Gibbons, isn't there a typographical error in the last full paragraph? Shouldn't the "to" be "t-w-o" instead of "t-o"?

Mr. Gibbons: That is obviously what is meant, but it may have been a typographical error in the original letter that was received.

By Mr. Gibbons:

Q. Will you tell us how you operated the circuit when you had it in operation and how you propose to operate it in the future, and you might refer to Exhibit marked 84.

A. Exhibit 84 is a map which was prepared to show the circuits to the three points which are the subject of this hearing and to indicate distances and great circle bearings between New York and the points in question. During the time that we operated the circuit to Lisbon, it was on a

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forked basis from the United States with Madrid. The distances and great circle bearings from New York to Lisbon and Madrid [399] are very close as will be noted from the map and the same antennas and frequencies are satisfactory for operation to both of these points.

We propose, if we are granted permission to re-establish this circuit, to operate on the same basis as we did during the period during which the circuit was in operation.

The frequencies to be used are WDT-2, 15535 kilocycles and WIT, 9290 kilocycles. These frequencies have been used on the Madrid circuit for quite some time and the entire set of facilities, comprising transmitters, antennas, receivers, control lines, etc., are available for Lisbon as well as for Madrid.

The re-establishment of the circuit to Lisbon only requires the authority to reopen this circuit. All facilities exist and we can start the service immediately. You might say that, based on the experience we have had with the previous operation of the circuit, the service was found to be entirely satisfactory, not only to us but to our correspondents.

Q. Mr. Scholz, in that connection, will you refer to and describe Exhibits marked as numbers 87 and 88 for identification and describe them for us? A. Exhibit 87 is a letter dated November 10, 1947, to the Chief Engineer of the Portuguese Marconi Company with which was transmitted a chart of the traffic routing [400] in our New York central office, a copy of which will be introduced by a later witness. We expressed a willingness to cooperate with Portuguese Marconi in the interchange of ideas to improve the general overall operation of the circuit.

Exhibit 88 is a copy of a letter dated November 19, 1947, which is in reply to our letter to the Portuguese Marconi previously mentioned. It is noted that in this letter of November 19 they indicated that our circuit which had been in operation for about a month was considered by them to be a first-class circuit.

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Q. In connection with that exhibit, just for the sake of the record, the letter marked Exhibit No. 85 appears to have been written by Mr. Spangenberg and the letter marked Exhibit No. 87 also written by Mr. Spangenberg, will you just show for the record who he is and why he is not here. A. Mr. Spangenberg is the Vice President of Mackay Radio. He is in charge of matters of frequencies, licenses, et cetera, and has carried on certain negotiations for the company abroad.

Mr. Spangenberg recently left to attend the CCIT Conference at Brussels.

Q. Will Mackay be prepared to change from the forked morse operation to Lisbon, as you have described it, to some other basis? [401] A. Well, yes. I recall that in Exhibit 86 Portuguese Marconi mentioned the intention of going to frequency shift printer operation and this we are prepared to do and, in order to continue on a forked basis not requiring additional frequencies, we are prepared to provide the necessary equipment at the Madrid station of our associated company to permit the same type of operation at that station.

Q. The Madrid station is operated by whom? I think you may have mentioned it earlier in your testimony. A. The full name of the company is Sociedad Anonima Radio Argentina, commonly known as Radiar, and sometimes known as SARA.

Q. That company is a subsidiary of the American Cable & Radio Corporation? A. That is correct.

Q. I don't believe you have mentioned the hours of operation for the Lisbon circuit and the speed and capacity of it. Will you state what the facts are? A. To the best of my knowledge, the New York-Madrid circuit is operated approximately sixteen hours a day and the same number of hours of operation could be made available to Lisbon. Should traffic conditions require, we are prepared to extend the hours of operation to anything to meet traffic requirements.

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[402] As to the speed of transmission, this circuit can be operated on speeds up to 100 words a minute. Based on the amount of traffic presently handled on the New York-Madrid circuit and what was handled on the New York-Lisbon circuit during the time it was operated, there is no question but what the facilities are more than adequate to handle the anticipated amount of traffic for some time.

I wish to repeat, we operated the Lisbon circuit forked with Madrid during the period from October 20, 1947, to January 2, 1948, without any difficulty and the same facilities remain unchanged in New York and are ready to be placed into service on the Lisbon circuit.

[405] Q. Let us consider the Amsterdam circuit. What are Mackay's plans for the operation of that circuit either directly from New York or through Tangier? A. Depending on Amsterdam's facilities, we are prepared to operate this circuit either directly from New York or via our Tangier relay station employing frequency shift and five-unit printer. We have been informed that Amsterdam might be in a position to be ready for a five-unit frequency shift printer circuit in the near future.

If Amsterdam wishes to operate a direct circuit with New York, we have available at our Brentwood station all of the facilities that we provided last fall for the opening of the direct circuit.

We propose to use WID-8, 18140 kilocycles; WIT-4, 10240 kilocycles and WAIH, 6927.5 kilocycles.

It is our opinion that the 18 and 10 megacycle frequencies ought to be satisfactory at the phase of the solar cycle this summer but we have also 6927.5 kilocycles available.

[406] It was not difficult for us to arrange these facilities for Holland, since, as I have said before, we have the Mackay developments relating to transmission line networks permitting the simultaneous use of an antenna on two frequencies.

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When we prepared for the circuit to Amsterdam after the Commission's authorization of this circuit last October, it was a relatively simple matter to add the frequencies selected for operation with Holland to the existing antennas.

All of these facilities are available at our Brentwood station and are ready to be placed into service. Under the proposed method of operation of the Lisbon and Paramaribo circuits—that is, forked with other points on existing facilities—no new frequencies will be required at Brentwood to re-establish these two circuits.

In the case of Amsterdam, I would like to point out that the Commission has authorized the use at Brentwood of the frequency 18140 kilocycles which is a prewar frequency authorized for use in the Philippines and which today is used by Mackay from Manila to San Francisco.

In using this frequency, namely 18140 kilocycles, at Brentwood for the New York-Amsterdam circuit, we will be getting some by-product service out of this frequency and no new frequencies over and above those already authorized will be required for the operation of the three points [407] involved. Similarly, the frequency 10240 kilocycles which is authorized to Mackay Radio at San Francisco, is regularly used in the service to Manila.

If the Dutch Administration is not ready for direct circuit operation with New York, we will work them via our Tangier station using tape relay.

We are prepared to work them on frequency shift and five-unit printer via our Tangier station using tape relay.

As a matter of fact, we prepared antennas and transmitters at Tangier for the purpose of operating with Amsterdam when the Dutch Administration had offered to start operation with Mackay via Tangier rather than wait for the opening of the direct circuit for which they were not at the time prepared.

For this purpose the State Department had authorized the use by Mackay at Tangier of frequencies 17520 kilocycles and 6840 kilocycles on a provisional basis but withheld

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extension of this authorization until the Commission's decision in this case is made.

In fact, satisfactory tests on printer were made between Tangier and Amsterdam and later extended to New York with tape relay at Tangier just prior to the Commission withdrawing its authorization.

We are now prepared to operate the service to Amsterdam via Tangier and all that is required is the Commission's [408] authorization to establish this circuit. Until we have more definite information as to the position of Amsterdam we would like to have authority to operate both the direct circuit from New York to Amsterdam and the circuit via the Tangier station as we are prepared for the operation of both.

Mr. Werner: May I interrupt there just for one minute? What frequencies did you say the State Department authorized Mackay to use out of Tangier?

The Witness: 17520 and 6840.

Mr. Werner: Are those frequencies authorized to Mackay at any of its continental United States stations?

The Witness: I don't believe so.

By Mr. Gibbons:

Q. Did Mackay take up with the Dutch Administration, as it did with Lisbon, as shown by Exhibit 85, and with Surinam as shown by Exhibit 89, the question of overall general operations for the future? I refer you to Exhibit 91. A. Yes.

Q. Did Mackay hear from the representative of The Netherlands Administration in answer to the letter identified as Exhibit 91? A. Yes. Exhibit 92 is the reply from Mr. van der Toorn of Dutch Administration to our letter of September 9, Exhibit 91.

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[409] Q. Will you state just generally what views were then expressed by Mr. van der Toorn with reference to future operations? Was he prepared to use on and off keying and also frequency shift keying methods? A. Yes. The Dutch were in a position to use both on and off and frequency shift methods. In the previous letter we had indicated our willingness to furnish equipment to the Dutch Administration if they had need for it, and in his reply he indicated that they needed no assistance.

Q. Will you explain what is meant by the reference in paragraph 4, I believe, of the letter, to the five-unit or seven-unit teleprinting system? A. The Dutch Netherlands Administration developed a seven-unit printer system with automatic RQ. In other words, if there was an error in the transmission, the equipment at the receiving end or the operating terminal would automatically send back a signal to the transmitting end in which the tape would be stepped back a certain number of characters and retransmitted. That method is known as the automatic RQ and is a system that was developed by Mr. van Duuren of The Netherlands.

Mr. Hawkins: May I ask a clarifying question?

Mr. Gibbons: Go ahead.

Mr. Hawkins: Is it your testimony that the Dutch developed the seven-unit system?

[410] The Witness: No. I didn't say that they developed it. They use the seven-unit system.

By Mr. Gibbons:

Q. Was the automatic RQ device, about which you have testified, an improvement so far as you know over any then existing seven-unit error-detecting printer operation? A. Yes. So far as I know that was an original development by van Duuren.

Q. Was the difference this: that when a mechanical or atmospheric imperfection introduced an error, automati-

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cally, without human intervention, the signal called for a re-run or return, is that it? A. That is correct.

Q. Whereas the other system requires the intervention of the receiving operator to get a signal back to the transmitting point calling for a re-run, is that true? A. Yes. An indication that an error has occurred, in some form—ring a bell or print some character—which indicated that there was an error in the transmission, then a request for the retransmission is made by the receiving operator.

Q. The letter there raises an inquiry in the fourth paragraph as to whether Mackay would be interested in that system, and it appears that Mr. van der Toorn indicated a willingness to furnish further information including the [411] patent position? A. That is correct.

Q. Do you have any comments to make about that? Have you indicated any interest? A. Yes, we have, and we have asked to be furnished with complete information, and the matter has been reviewed and is now under study by our patent department.

Q. Is it a matter that you believe requires some careful patent research? A. Yes.

Q. Just to complete the letter, reference is made to program service and radio photo service, can you tell us what Mr. van der Toorn said? A. He mentioned a reference to radio photo service, that they had such a service prior to the war, and the demand was small. They had not yet restored the radio photo service since the equipment formerly used had been looted by the Germans.

Q. Did he indicate much use of a Mackay circuit if authorized for picture service? A. It is not just exactly clear. It is mentioned that: "though program transmission will to a certain extent be applied, we do not believe that any new telegraph channel which we would open eventually with you, should be complicated for this purpose."

[412] The whole thing indicating from this letter that there is apparently little need for program transmission service.

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Q. That is with regard to program service, but what did he say with regard to picture service? I believe he had it before the war and the machine was taken by the Germans and there wasn't much use for the service before the war, is that true? A. That is right.

Q. Did he indicate whether or not he saw much use for a Mackay circuit if authorized for that kind of service? A. No.

Mr. Werner: You mean he didn't indicate?

The Witness: He indicated there wasn't much need for the service.

[413] By Mr. Gibbons:

Q. Mr. Scholz, you have testified about possibilities of radiophoto and program services with Holland and Portugal. Is Mackay Radio prepared to provide those services? A. Yes.

Q. Will you state what it has done in connection with radiophoto program service in the past, and the extent to which it will handle it for these points? A. We operated a photo service—a radiophoto service—between New York and Brazil, and provided the equipment in our operating room to handle such a service.

We also handled in the past a number of program pickups. Recognizing that services of this kind—that is, radiotelephoto and program service—will develop, Mackay has provided and has available facilities to render these services as required by any of our correspondents.

[414] Q. With respect to the frequencies which Mackay would use at Tangier for communication with Holland, if such communication is authorized—I have in mind frequencies 17520 kilocycles and 6840 kilocycles—I don't know whether the record is clear as to whether Mackay is licensed to use those for Tangier but temporarily not for

C. E. Scholz, for Intervenor—Direct.

Holland. Can you state what the situation is? A. My understanding is that the frequencies in question are part of the frequencies which Mackay is licensed to use at Tangier. These two particular frequencies, as I understand, are used on services from Tangier to other points than Holland, that under the procedure of authorizing the use of frequencies at Tangier, before any frequency assigned to Tangier can be used on a circuit such as the Tangier-Amsterdam circuit, clearance must be obtained from the State Department—or rather authorization must be obtained from the State Department—and they in turn clear with the FCC and other government agencies, whether or not the use of those frequencies for the particular circuit [415] involved would result in any interference to services.

On that basis these two frequencies were cleared with the State Department for use on the Tangier-Amsterdam circuit, although they had been used at Tangier for other services.

Q. In connection with your earlier testimony about communication through Tangier to certain points which you referred to on the map in the album of photographs, such as Sofia, Bucharest, Moscow, Kabul, is Mackay licensed for direct communication from New York to these points and can Mackay provide such direct communication, should it be desirable? A. Yes.

Q. You are? A. Yes, sir.

Q. Why then do you use the relay through Tangier? A. The relay through Tangier is used because of the difficult propagation over the direct path and to give a more reliable service to these points.

Forest L. Henderson, for Intervenor—Direct.

[416] FOREST L. HENDERSON was called as a witness for and on behalf of Mackay Radio and Telegraph Company, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Hartman:

Q. Mr. Henderson, will you identify yourself for the record please? A. My name is Forest L. Henderson. I am Executive Vice President and Director of the American Cable & Radio Corporation and of its three subsidiary companies; All-America Cables and Radio, Inc., The Commercial Cable Company and Mackay Radio and Telegraph Company, Inc., the latter being the applicant in this case.

Q. Will you indicate the extent of your experience in the telegraph industry? A. I have had 32 years experience in land-line, radio and submarine cable telegraphy, working in various capacities from telegraph operator to my present position.

I started work as a student telegraph operator with the Union Pacific Railroad in 1916 and had four years service as a radio operator and technician, in the Navy in the first World War and in the Merchant Marine after that war.

[417] I joined All-America Cables as a cable operator in 1921 and have been successively supervisor, Station Electrician, Station Manager, Traffic Manager, Operating Vice President, and in my present capacity since that date.

I was elected Executive Vice President of Mackay Radio in 1945.

[423] Q. Mr. Henderson, will you trace through on your chart the handling of traffic destined to or originating in the three points of communication involved in this proceeding? A. I will first describe how outbound messages are handled to the three countries Holland, Surinam and

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Portugal. These messages may originate in our branch offices, our private wire section or the counter at 67 Broad Street.

[424] In addition messages may be transferred to us by the Western Union destined to these points and messages also arrive at 67 Broad Street which originate at points in our system outside of the United States.

A message destined to Holland originating in a branch office comes into the Branch office section on the 4th floor indicated at the left side of the 4th floor plan. It is placed on the belt by the receiving operator and is carried to the distribution center on the 5th floor in less than 15 seconds.

After arriving at the distribution center on the 5th floor, shown at the upper left hand corner of the plan, the message is processed by a clerk and forwarded by belt from the outgoing distribution center to the traffic supervisor's position at the next to the last table in the European division, shown on the left hand side of the plan.

[425] There is a drop there for all messages routed to this position. It is then placed on a direct cable circuit for transmission to London.

Mr. Werner: I am not quite clear as to which traffic you are talking about—that is Mackay traffic, Commercial Cable traffic or what traffic you are talking about.

[426] The Witness: All traffic for Holland.

Mr. Werner: All traffic for Holland filed with any company of the AC and R System?

The Witness: That is correct.

[428] Traffic originating at all of the before mentioned points destined to Portugal is handled in the same manner,

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except that the transmission from New York is to the Azores where the message is turned over to Cable and Wireless for further transmission to Portugal. Such messages may also be handled via London as an alternate route.

Q. That description covers the handling of Portuguese traffic by Commercial Cables. Will you describe the manner in which traffic destined to Portugal is being handled by Mackay Radio? A. Messages handled by Mackay originating with the Western Union, the branch offices, private wires, or in [429] transit, are delivered from the receipt point by belt to the outgoing distribution center in the cable division as previously described in the handling of messages by Commercial Cable.

From that point they are transferred by belt to the Mackay Radio Lima circuit which is adjacent to the Latin America section shown on the left hand side of the plan for the fifth floor.

The message is then transmitted over the Mackay Radio circuit by Mackay operators to the All America Radio station at Lima from which point it is immediately retransmitted on the All America direct radio circuit to Lisbon.

I might add that, during the strike conditions in the first few months of the year, and until we were able to readjust our operation after the strike, much of the traffic normally handled via the Mackay circuit to Lima was physically handled on the All America Cable circuits instead. However, the Mackay transmission to Lima is the normal Mackay route for Portugal traffic and is the route now being, [430] used and which we propose to continue using until we are permitted to re-establish our direct operation to Lisbon.

Mr. Werner: Is that an automatic relay at Lima or a semi-automatic relay or manual reprocessing at Lima?

The Witness: Manual.

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Mr. Werner: It is manual at Lima.

The Witness: Yes, sir.

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[434] Q. In the event of direct radio circuit operation to the three points involved will you indicate the traffic flow on the same chart? A. Yes. While we were operating the circuit to and from Lisbon the circuit was forked on the transmitting side with our circuit to Madrid and operated from the second table to the right of the outcheck position in the Mackay Radio division, shown at the lower center of the fifth floor plan.

I might add that our circuit to Madrid has plenty of capacity as the volume to Madrid is not too large, and the use of this circuit for our Portugal traffic promotes efficiency, and there is no difficulty at all in handling it on our Madrid circuit on a forked basis. No additional operators are required and we are able to do this on the same frequency. Traffic inbound from Lisbon was received on the same table.

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[435] Q. You describe the handling of traffic to and from Portugal and Surinam as it is proposed in the event of direct circuit operation. Would you indicate the same situation with respect to traffic to and from Holland, The Netherlands? A. We expect to establish a direct radio teleprinter circuit between New York and Holland and an alternate route through our relay station at Tangier, both of which would be terminated and handled on an appropriate table position in the Mackay division on the fifth floor.

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[436] Q. Have you any other comments concerning the traffic handling of the AC&R companies as portrayed by the plans shown in these two charts? A. No, but I would like to say that as a matter of practical telegraphy, we consider our branch office and central office operations to be fast, efficient, and flexible.

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We believe our present layout and method of handling traffic compares favorably with that of any other communication company, although it does not mean that we are not continually trying in every way possible to improve our service and competitive position.

[440] Q. Mr. Henderson, if you have no further comments on the pictures, will you turn please to the exhibit which has been identified as Exhibit No. 95, showing the map of Commercial Cable System.

Will you indicate on that map the present handling of traffic to and from the United States and Holland and Portugal? A. Yes. The Commercial Cable map shows the six main trans-Atlantic cables operated by the Commercial Cable Company which are indicated as Main 1, 2, 3, 5, 4A & B and 6A & B.

Q. Those main four cables are apparently split by letters at the Azores, is that correct? A. Yes. The sections indicated as B are sections west of the Azores and those sections indicated as A are those sections east of the Azores. All of these cables [441] terminate on the European side at our automatic relay station at Waterville, Eire, from which point there are cable and landline connections to London through Weston and Cable and landline connections to Havre, Paris, Antwerp, Brussels and Frankfort, which now replaces the Wiesbaden terminal.

From London there are landline and cable connections to Rotterdam. The Havre 2 cable between Waterville and Havre, France also has a carrier installation not shown providing two circuits, one physical and one carrier. Havre 1 and Havre 2 should be added to the list of cables in the legend in the upper center of the plan. The transmission between New York and London, of course, is direct, without any manual rehandling at intermediate points.

A message from New York to Holland may be sent to London by any one of the six cable routes. Upon reception

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at London there is a manual retransmission to Rotterdam over a direct landline to the Coast and thence by submarine cable circuit to the Commercial Cable office at Rotterdam. Westbound messages from Rotterdam are handled in the same manner as eastbound messages.

The messages to Portugal may be handled over cable sections Main 4B, Main 6B or the two channels of the Western Union HO 1 cable, shown as the dotted line at the bottom of the map, which are operated by the Commercial Cable Company [442] on a lease arrangement.

Those sections connect the Commercial Cable office in New York direct with the Commercial Cable office in the Azores.

At the Azores, messages for Portugal are transferred to Cable and Wireless for direct transmission to Portugal. Messages destined to Portugal may also be handled over an alternate route, when circumstances make such route necessary, by any one of our Main cable circuits to London, and transferred at that point to Cable and Wireless for further transmission by cable to Lisbon.

Mr. Werner: By the way, the transfer to Cable and Wireless at the Azores, is that an automatic transfer, semi-automatic or manual relay?

The Witness: Manual.

Mr. Werner: Manual relay.

The Witness: Manual.

Mr. Wendt: Does Commercial get any return traffic from Portugal?

The Witness: Some.

Mr. Wendt: Much.

The Witness: Not a great deal.

By Mr. Hartman:

Q. In the case of the transfer at London, Mr. Henderson, that transfer also involves a manual retransmission, [443] does it? A. That is correct.

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Q. Going back to the handling between the United States and Holland again, what is the situation as to the operation, ownership, and so forth of the lines between London and Rotterdam? A. The joint Anglo Dutch cable.

Q. That is leased by the Commercial Cable Company, is it? A. Yes.

Q. Is the land line also a part of the cable circuit, or is that leased from the British Post Office? A. It is a part of the cable circuit leased from the British Post Office.

Q. In other words, it is both? A. That is right.

Q. You have said that the transfer at the Azores and at London on Portugal traffic is manual, is that correct? A. That is correct.

Q. Do we provide pickup and delivery service at our terminal at Rotterdam? A. The Commercial Cable Company provides its own pickup and delivery service at Rotterdam.

Q. How about traffic for other points in Holland? A. Traffic for Amsterdam and other points in Holland [444] Holland beyond Rotterdam is transferred to the Holland Telegraph Administration for delivery. I might note that Amsterdam is the heaviest traffic center in Holland and we have no means of direct communication with that very important center.

Q. Is your transfer to the Holland Telegraph Administration in Rotterdam a manual handling or is that automatically handled? A. It is manual.

[446] Q. Mr. Henderson, have you any comments as to the possibility of improving, by direct radio transmission, [447] the present speed of service experienced in the handling of our traffic with the three points involved in this proceeding? A. Yes. Obviously, a direct radiotelegraph circuit giving direct service between New York and Amsterdam will eliminate two additional handlings now involved at London and Rotterdam.

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Mr. Werner: For Commercial Cable you mean?

The Witness: For any traffic handled that way.

A. (Continuing) A direct radio circuit will eliminate a manual transfer at the Azores on Portugal traffic and the necessity of indirect handling through Lima.

[448] **Q.** Mr. Henderson, assuming that a direct circuit is granted Mackay to operate with Surinam what traffic do you propose to handle via that circuit?

[449] **Q.** What would be your answer to the same question, in handling traffic to Portugal? **A.** All traffic destined for Portugal, unless specifically routed via Commercial Cable Company will be forwarded over the direct Mackay Radio circuit to Lisbon.

Traffic specifically routed via Commercial Cable will be handled over Commercial Cable direct cable circuit to the Azores and transferred to the connecting cable company at that point for transmission to Lisbon in accordance with the Commercial Cable Company's contractual agreements with the connecting cable company.

In the case of Portugal also, we anticipate handling, over the direct circuit, traffic for the Portuguese colonies to which we do not have satisfactory routes.

Q. Will you indicate, Mr. Henderson, the proposed routing of traffic destined to the Netherlands in the event Mackay is granted a direct circuit? **A.** All traffic routed via Mackay and all AC&R unrouted traffic, except that destined to Rotterdam, will be forwarded over the direct Mackay Radio circuit to Amsterdam. All traffic specifically routed via Commercial Cable and AC&R unrouted traffic destined to Rotterdam will be forwarded over Commercial Cable Company's facilities to Rotterdam for delivery by Commercial in Rotterdam.

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[451] Q. You have indicated how, through the elimination of manual relays, and turning over to connecting companies, the speed of service will be improved over direct Mackay circuits as compared to the methods and routes now being used by the AC&R system.

What do you say as to the accuracy of service over the proposed direct circuits as compared with the existing indirect routes? A. It naturally follows that the less handling required, the less chance of errors occurring in the transmission and delivery of a telegraph message—and this is true to a greater or lesser degree whether the relays are manual or automatic. Therefore, necessarily, the elimination of relays tends to reduce the chance of errors and to improve the accuracy of service.

Q. Is there any other advantage of directness of service as compared to indirect service, particularly when a relay in a third country is made? A. Yes. There are telegraph administrations and even individual customers who do not wish their messages to transmit and to be relayed in a third country for reasons of sovereign pride, secrecy, security or otherwise. This is true at all times, but is particularly true in time of war or threat of war. Hence, the directness of service from country of origin to country of destination is a matter of considerable public concern and an asset of value to a communications system. This is fully appreciated by RCAC as evidenced by the stress which it places in its advertising upon the large number of direct circuits which it operates throughout the world as contrasted to indirect routes.

[453] Q. There is a letter before you. You spoke of the stress which RCAC places upon the large number of direct circuits which it operates throughout the world. You have before you a letter. Will you indicate the contents of the letter in respect to that point? A. Yes. Here is a copy of a letter which RCAC sent out to public telegraph

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users during our recent strike. The first two paragraphs deal with our unfortunate strike situation, but you will note the last paragraph reads as follows:

"In using our service you always secure advantages that are unparalleled because our huge network of circuits connects the United States DIRECTLY with more than sixty foreign countries. Signed RCA Communications, Incorporated."

Q. The word "directly" is capitalized in that letter, is it not, Mr. Henderson? A. All letters in that word are capitalized.

[455] Whereupon, CHAUNCEY R. McPHERSON was called as a witness for and on behalf of Mackay Radio and Telegraph Company, and having been first duly sworn, was examined and testified as follows:

[465] By Mr. Gibbons:

Q. Will you identify yourself for the record, please? A. My name is Chauncey R. McPherson. I am Vice President and Secretary of American Cable & Radio Corporation, and Vice President of the three AC&R subsidiaries: All America, Commercial Cables, and Mackay Radio.

Q. What is the nature of your duties as Vice President of the three operating companies? A. I am in charge of commercial or sales development activities; also supervision of negotiations with foreign governments and carriers in connection with existing or proposed operations of the three AC&R companies.

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Q. Are you familiar with the negotiations of Mackay Radio in relation to the establishment of circuits with Portugal, Holland and Surinam? A. Yes. Since 1942 I have been actively identified with such negotiations. My knowledge of these negotiations prior to that time, especially in relation to Holland, has been acquired from the records of the Company.

Q. Are you also familiar with the cable operations of [466] Commercial Cable Company and All America Cables and Radio, Inc., in the United States and foreign countries? A. Yes.

Q. How long have you been in the communications business? A. Continuously since 1919, when I joined All America Cables and Radio, Inc., then known as Central and South American Telegraph Company, as Assistant to the President.

Q. Mr. McPherson, let us consider first Portugal. Will you give us a brief resume of the nature and extent of Commercial Cable Company's operations between the United States and Portugal? A. Commercial Cable does not operate in continental Portugal; for some forty years before World War II it handled traffic to and from Portugal, initially through London or the Azores where traffic was transferred to and from the British cable system. In order to receive traffic from Portugal over the Eastern Telegraph Company or British cable route, Commercial Cable Company employed a staff of canvassers in Portugal to develop traffic routed via Eastern-Commercial.

It was found, however, that the Eastern Telegraph [467] Company, operating in Portugal, began in 1931 to canvas for the Eastern Telegraph Company-Imperial route over which traffic moved from Portugal through London, thence over the Imperial Cables to Canada.

This made it exceedingly difficult to develop in Portugal, through the canvassers of Commercial Cable Company, traffic routed via Eastern-Commercial, with the result that

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the Commercial Cable Company arranged with the Italian Cable Company for the exchange of Portuguese traffic at the Azores, until Italy entered the war and the Italian cable to the Azores was cut in 1940.

In 1941, a rather sudden and unexpected change took place in Portugal which had the result of excluding the Commercial Cable Company from participation in traffic from Portugal.

The Portuguese Marcone Company, a British owned company, conducting external radio operations from Portugal, was given special privileges by the Portuguese Government by a Decree issued in July, 1941.

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 [470] Q. Upon being advised of the exclusion of the Commercial Cable routing as a recognized route in Portugal, what did the Commercial Cable Company do? A. Through its agent in Lisbon the matter was taken up with the Portuguese authorities and with Cables and Wireless.

It was indicated by the Portuguese Administration that if the Eastern Telegraph Company and Commercial or Portuguese Marcone and Commercial were to come to an agreement and make a joint request to the Portuguese Government for recognition of Eastern-Commercial or Portuguese-Commercial routings, the request would be granted.

Further negotiations were conducted, but it was found that Portuguese Marcone fairly controlled the situation and that that Company would not cooperate to restore the Commercial routing.

Q. Just for clarification, when you speak of Eastern and when you speak of Cables and Wireless, do you mean one and the same thing? Are the terms you used interchangeable? A. Eastern was one of the companies of Cables and Wireless.

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Q. Which was operating by cable out of Portugal?

A. Out of Portugal.

[471] Q. So when you speak of Cables and Wireless, and Eastern, in regard to handling traffic to and from Portugal you mean the British cable system? A. Yes, which means the Eastern, or Europe and Azores.

Q. Having mentioned Europe and Azores, will you clarify that a little bit further? Does that describe the route in and out of the Azores? A. As I understand it, Europe and Azores have cables between continental Portugal and the Azores, and the Eastern has a route from the Azores to England back to continental Portugal.

Q. Both being cable routes and part of the Cables and Wireless, British cable system? A. Yes, sir.

Q. You have just described some of the factors that have been encountered. Tell us what action was then taken.

A. The matter was taken up with Sir Campbell Stuart of the Imperial Advisory Communications Board in London, with a view to reaching a solution.

[472] Q. Will you describe the further correspondence? A. Answering Sir Campbell Stuart, Col. Behn, under date of January 15, 1942, the message marked as Exhibit No. 104 for identification, replied referring to a letter received from the Commercial Cable Company's agent, a Mr. Noble in South Africa, reporting the result of a trip to Lourenço Marques, Portuguese Government and Portuguese Marconi. It was impossible for the postal authorities in Portuguese East Africa to accept any routed cablegrams for transmission to America.

Q. Just at that point you might read the sentence beginning in the third from the last line on the third page [473] of that exhibit. A. "In exchange the Marconi Company now control, wherever possible, all outgoing messages

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from Portuguese stations, so that cables from LMarques to the Americas are radioed across the Atlantic and passed on to RCA for delivery. Under these arrangements it was therefore impossible for the postal authorities in LMarques to accept any routed cablegrams for transmission to America."

Q. That is the end of the quotation of the cablegram from the agent, Mr. Noble, referred to in the message? A. Yes.

Q. Was a reply received to Colonel Behn's message of January 15, Exhibit No. 104? A. Yes. To Colonel Behn's message of January 15, 1942, Sir Campbell Stuart replied on January 16, 1942, the message marked as Exhibit No. 105 for identification, stating that Cable & Wireless was not hostile towards our Company but the whole situation in relation to communication with Portugal presented difficulties and the existing situation was very unsatisfactory. It appears from the information in Sir Campbell Stuart's message of January 16, 1942 that Portuguese Marconi had established a new flat rate scheme in relation to communication within the Portuguese colonial empire as a result of which it received [474] the position of exclusivity for Portuguese traffic, coupled with a preferential status for other traffic, the underlying factor being that no company would be recognized for communication purposes in any Portuguese territory in which it did not operate. The Company, through Colonel Behn, continued to pursue the matter in order to remedy Commercial Cable Company's situation, as shown by message dated January 17, 1942 to Sir Campbell Stuart—the message marked as Exhibit 106 for identification—since neither RCA nor Western Union were prejudiced by the action of the Portuguese Government, RCA being the United States correspondent working by radio with Portuguese Marconi and Western Union having a contract with Cable & Wireless under which they received Cable & Wireless traffic from Portugal. The con-

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tract between Western Union and Cable & Wireless and Portuguese Marconi, and its effect upon Commercial, will be discussed later.

[476] Q. What happened next with respect to the Portuguese situation? A. I went to London and Lisbon in March, 1942, for the purpose of finding a solution to Commercial Cable Company's difficulties in Portugal and also for the purpose of arranging for the establishment of radiotelegraph circuits between the United States and British Empire points.

Q. What was the result of your visit with respect to the Portuguese situation? A. Upon my arrival I learned from Cable and Wireless of its fear of the Portuguese Government's favoring of wireless as opposed to cable international communication [477] which was evidenced by their desire to cooperate in protecting the cable business in Portugal even to the extent of reestablishing The Commercial Cable Company's participation in Portuguese traffic. In spite of the fact that Cable and Wireless owned approximately 90 percent of Portuguese Marconi, it feared that this trend in favor of radio would ultimately force their cables out of Portugal by a failure to renew the cable concession or so substantially restrict the distribution of traffic to the cables as to make their operation unprofitable. As a matter of fact, CPRM was, at that time, in control of all outgoing international traffic.

Q. CPRM, I take it, being Portuguese Marconi? A. Portuguese Marconi.

As a result of these discussions, it became apparent that to fully protect our position, it was desirable to establish a radio connection with Portugal as well as to conclude an agreement for an equitable share of the cable traffic. With the active cooperation of Cable & Wireless these negotiations were brought to the point where Cable & Wireless agreed to cancel the Western Union agreement,

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on the required six months notice, with a view to permitting both Western Union and Commercial thereafter to participate on a proportionate basis in the cable traffic from Portugal, provided we were successful in securing the [478] consent of Portuguese Marconi.

Q. At this point perhaps you might describe the exhibit marked marked as No. 111 for identification, the Western Union contract. A. This is a certified copy obtained from the Federal Communications Commission of the letters constituting the agreement of December, 1940, between Cable and Wireless and Western Union. It shows that Portuguese Marconi was to take over in Portugal for Western Union the canvassing of traffic for the United States in the same manner as Portuguese Marconi had under its charge the canvassing of traffic for the Eastern or Cable and Wireless company. It also shows that the Eastern Company and the European and Azores Company, which is the C&W company in the Azores, and Portuguese Marconi would hand over to Western Union at the Azores all traffic for the United States from Portugal, including the continent and the islands, except messages specifically routed otherwise, provided that the number of messages so transferred to Western Union in any one month shall not be less than 50 percent of the number of eastward messages handed over at the Azores by Western Union. I might say that this contract was cancelled June 8, 1942, according to affidavit attached to the exhibit, executed by Mr. Willever, First Vice President of Western Union, on September 14, 1942.

[479] Q. But before the Western Union contract was cancelled, Mr. McPherson, what action had to be taken? A. Since the Western Union contract stood in the way of our working out an equitable arrangement for The Commercial Cable Company, and in order to permit The Commercial Cable Company to participate in Portuguese traffic without awaiting the termination of the six months' notice of cancellation required under the Western Union contract, we

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had to convince Western Union that their contract was in conflict with their cable landing licenses.

Q. Mr. McPherson, at this point will you describe the next several exhibits marked as Numbers 112 to 116 inclusive? A. These are copies of correspondence taken from the company's files, the first letter, dated May 14, 1942, being the first approach made to Western Union on the subject by Mr. Goldhammer, the President of The Commercial Cable Company at that time. That is Exhibit No. 112.

Q. In that letter did Commercial Cable Company ask Western Union, in view of the circumstances related, whether Western Union would be willing to waive the six months' notice of cancellation provided for in its agreement? A. Yes, it did.

Q. What was the reply, turning to Exhibit 113? A. The next letter, marked Exhibit No. 113, is a copy [480] of a letter dated May 18, 1942, from Mr. Willever to Mr. Goldhammer, is the reply, stating that Portuguese Marconi Company had given Western Union six months' notice of cancellation of its arrangement and Western Union saw no reason why they should waive the six months' notice of cancellation and gratuitously lose Western Union's participation in this business.

Q. What is the next letter? A. The third letter in the series, marked Exhibit No. 114, and dated May 25, 1942, from Mr. Willever of Western Union to Mr. F. W. Phelan, All America Cables and Radio—

Q. Let me interrupt you right there, Mr. McPherson. Was Mr. Phelan an officer of American Cable and Radio Corporation at that time? A. Yes, he was.

[481] Q. And also of All America Cables and Radio? A. Yes. This was written after Mr. Willever was advised orally, upon receipt of his letter dated May 18, 1942, that the Western Union contract was in violation of the Western Union landing license.

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Apparently, from this letter of May 25, 1942, Western Union did not agree that its contract was in violation of its landing license, with the result that in the next letter in this series, dated May 26, 1942 and marked Exhibit No. 115, to Mr. Willever from Mr. Phelan, we set forth the reasons why the Western Union contract was believed to be contrary to the provisions of Western Union's landing licenses. The correspondence concluded with a letter dated May 27, 1942, marked as Exhibit No. 116, from Mr. Willever to Mr. Phelan, wherein Western Union ultimately agreed that its arrangement with C and W contravened Western Union's cable landing license in this country.

Q. Now, looking at Exhibit 116, Mr. McPherson, will you read the first sentence? A. "Having referred to your letter of May 26 to Vice President Stark, he advised that in the circumstances, as you explain them he is disposed to concur in the view that our arrangement with Companhia Portuguesa Radio Marconi is in contravention of the license under which our Azores cable was landed in country, and that we [482] are consequently in no position to stand upon our rights under that document."

Q. Who is the Mr. Stark referred to, do you know, or who was he then? A. Who was Mr. Stark?

Q. Yes. A. I understand he was counsel for the Western Union.

Q. To get back to negotiations with Cables and Wireless and Portuguese Marconi, was the latter's consent given to a new arrangement that would permit Commercial Cables and Western Union to share on a proportionate basis in the Portuguese westbound traffic? A. Yes. With the active support of Cable and Wireless, we were able to secure Portuguese Marconi's consent to such an arrangement and, at that time, Portuguese Marconi also stated that, provided it was relieved of the requirement of its contract with RCA to send all unrouted traffic over the RCA circuit, it would operate a radio circuit with Mackay in New York and would apply the same principle of proportionate

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division of traffic over the two radio circuits with New York.

Q. Before we take up the matter of radio communications, Mr. McPherson, what was the outcome of your negotiations with respect to cable traffic? A. Before we were able to enter into a contract [483] between Commercial on the one hand and Cable and Wireless and Portuguese Marconi on the other, as was contemplated on the cancellation of the Western Union 1940 contract, we were advised that a new arrangement had been worked out whereby the British submarine cables were permitted to control the distribution of their cable traffic without the intervention of Portuguese Marconi and, at the suggestion of CPRM, we requested Cable and Wireless to execute an agreement covering such traffic.

Q. Now, you can go ahead with Exhibit 117. A. This is the arrangement that was ultimately made between the Commercial Cable Company and Cable and Wireless, Ltd., as set forth in two letters, one dated July 17, 1942 from Cable and Wireless, Ltd., and the other, of August 28, 1942, from The Commercial Cable Company.

Under this agreement, The Commercial Cable Company is assured of a proportionate return of cable traffic which comes into possession of C and W from Portugal.

[484] Q. Now, Mr. McPherson, under the situation in which Commercial is operating, do you consider that it is providing effective competition to the RCAC-Portuguese Marconi direct radio route? A. No. I do not. The great drop in Commercial's traffic to and from Portugal bears out this statement, and, moreover, traffic figures to be introduced later will show that while the American cable carriers received from Portugal in 1941 77 per cent of the traffic to and through the United States—and this was the year before the new Portuguese Decree giving control

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of traffic to Portuguese Marconi became effective—the traffic received by the cable carriers constantly decreased until they handled in 1946 only 22 per cent of the traffic. Therefore, I see no way that AC&R can effectively compete except by the establishment of a direct radio circuit.

[490] Q. What happened next, Mr. McPherson in your efforts to establish the Mackay circuit with Lisbon? A. I returned to the United States because we were not [491] only having difficulty about the RCA contract with Portugal but we could not open our circuit with London after FCC authorization because the British felt that their contract with RCA required them to forward all unrouted traffic over the RCA circuit and there, again, under the regulations of the British Post Office, it was impossible to introduce a "Via Mackay" routing in Great Britain.

Upon my return to New York, we brought all these problems to the attention of the Department of Justice, the Federal Communications Commission and the Department of State.

The result was that the Secretary of State notified the American Legation in Lisbon, by air mail under date of November 6, 1942, as follows:

"Your dispatch no. 592 of September 3, 1942 relative to agreement between Mackay Radio and Telegraph Company and Companhia Portuguesa Radio Mareoni, Lisbon, concerning the establishment of a radio telegraph circuit.

"You may in your discretion advise appropriate Portuguese authorities that the Government of the United States is anxious to establish duplicate radio telegraph circuits between the United States and Portugal and that in conformity with foregoing desire it has no objection to the 'Declaration of Agreement' between the Mackay Radio and Telegraph Company and the Companhia Portuguesa

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Radio Marconi for the establishment of a [492] second radio telegraph circuit between the United States and Portugal. It should be clearly understood however that this Government assumes no obligation with regard to the establishment of such a circuit especially insofar as the question of supply material from this country is concerned. HULL.

[495] Q. Mr. McPherson, following the sending of the telegram by the Secretary of State, which you quoted, was certain action taken by the Federal Communications Commission? A. Yes.

Q. With respect to RCA contracts? A. Yes, it was.

Q. Is the action that was taken shown by Exhibits numbered 77 through 82, inclusive (handing to the witness)?

[496] A. Yes.

[497] Q. Following the war, were any efforts made to establish a circuit with Portugal? A. On June 29, 1945, the Board of War Communications authorized Mackay to negotiate with Portugal for a Lisbon-New York circuit. At that time we realized that a resumption of negotiations for the establishment of a direct circuit with Mackay would be fruitless until the equipment problem of Portuguese Marconi had been solved, and we continued our efforts to obtain equipment, and ultimately we succeeded in having five Federal transmitters, antenna material and other associated apparatus shipped to Portuguese Marconi early in 1946.

Portuguese Marconi advised us in September, 1946 that it was technically prepared to open a circuit with Mackay, and in March 1947 that it had received the approval of the Portuguese Government to establish the circuit.

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[502] Q. Mr. McPherson, that finishes Portugal for the time being.

Let us return to a consideration of The Netherlands.

Will you refer to Exhibits 71 and 72 introduced through Mr. Stockton and state whether, following the rejection in June 1931 of Mackay Radio's proposal, any further attempts were made to establish a circuit with The Netherlands? A: Yes. They were continued from time to time but without much success and it was not until after the war and the RCA waiver to the Holland Administration in early 1945, that we could really stimulate much interest on the part of the Holland Administration in opening a circuit with Mackay.

[505] Q. Now, what happened thereafter with respect to Holland? A. Well, Mackay nevertheless entered into negotiations with the Dutch in the hope that we might obtain their agreement to the operation of a circuit with Mackay since the Board of War Communications had in September 1944 authorized such negotiations.

It was found in our early negotiations that Holland was in dire need of equipment in order to restore its external communications services. Mackay undertook to assist and arranged through the Paris factory of the IT&T French affiliate, to make available as early as was then possible some transmitting equipment.

In October 1945 we proposed to the Administration the establishment of a circuit between the All America station in Lima and the Amsterdam station, as well as requesting further consideration of the proposed circuit with Mackay at [506] New York.

[509] In the negotiations that followed it was learned that the Dutch were seriously considering the elimination of all canvassing in Holland, increasing the efficiency of

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wireless operations and the distribution of traffic between cable and radio routes by formula.

[510] Q. As a result of what you heard from the company's representative in Holland; you obtained and sent to Holland a certified copy of the RCA waiver, is that the fact? A. Yes, it is.

Q. Now, will you continue with your negotiations with Holland, beginning there in February 1946? A. On February 28, 1946, we proposed terms for an agreement to govern the operation of a Mackay Amsterdam circuit on the basis that Mackay would transmit over the circuit all AC&R system traffic—except Latin American traffic and messages otherwise routed—for all points in Holland beyond Rotterdam, but that should canvassing in Holland be discontinued and outbound messages distributed by formula we would make the circuit the normal via for all Holland traffic.

On June 8, 1946, the Administration advised that the terms submitted were not acceptable.

On September 19, 1946, the Director in Chief of Tele-
[511] communications advised a Mackay engineer, then in Paris, that before a formal agreement for the operation of the circuit could be signed, the following points must be settled:

(1) Circuit must handle all system traffic to points beyond Rotterdam plus Mackay's routed traffic to Rotterdam.

(2) The volume of traffic must equal an agreed percentage of the system's total Dutch traffic and if necessary to reach this percentage a part of the Commercial Cable Company's traffic to Rotterdam must be added.

(3) Westbound traffic must be handled in such a manner as to take into consideration the interests of RCA.

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On the same day, PTT advised its willingness to establish the circuit provided a satisfactory agreement could be arrived at.

Q. What happened next? A. On October 24, 1946, we advised that we were prepared to guarantee the volume of traffic put over the circuit would be at least 50 per cent of the total Dutch traffic in the control of Commercial Cable Company and Mackay.

On December 24, 1946, the Director General advised that the Administration was in general willing to establish a radiotelegraph circuit with Mackay and requested a favorable and early reply. Mackay replied that it would apply [512] immediately for the necessary license.

On January 22, 1947, Mackay proposed new terms to govern the operation of circuit, among which was the provision that all CCC unrouted traffic to points beyond Rotterdam and all Mackay traffic not otherwise routed, together with so much of CCC's traffic to Rotterdam as required to bring the volume of traffic up to a volume equal at least to 50 per cent of the total volume of Mackay's and CCC's Holland traffic would be transmitted over the proposed circuit, with the understanding that Mackay would receive a proportionate return of westbound traffic.

In February 1947, Mackay again applied to the Commission for authorization to communicate with Holland as well as to the other points involved in this hearing which authorization was denied in June 1947.

On July 8, 1947, the Director in Chief stated PTT's desire for an additional direct radio circuit to New York as soon as possible and asked if the FCC license could not be expedited.

On reconsideration in October 1947, the Commission granted us temporary authorization, whereupon on October 16, 1947, we advised Holland of our ability to open the circuit immediately.

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On November 19, 1947, the Administration advised that [513] on account of personnel difficulties it would be necessary to delay opening.

On November 20, 1947 the Director in Chief suggested working via Tangier in order to circumvent the personnel and equipment difficulties, and we replied that Mackay would take the necessary steps to permit of this method of working.

The necessary engineering was completed at Tangier and on December 8, application was made for an FCC license to operate the Amsterdam circuit via Tangier.

On December 15, 1947, the Administration advised it would be ready to open via Tangier on January 1, 1948. Trials between Tangier and Amsterdam commenced January 30, 1948 and continued until February 10, 1948.

On February 11, 1948, Mackay advised Holland of the Commission's refusal to renew its license.

Q. Mr. McPherson, does Mackay have any formal agreement with Holland Radio for the operation of its proposed circuit? A. No, not a formal agreement but as in the case of Portugal an understanding based upon an exchange of correspondence setting forth the general details.

Q. I believe that correspondence is covered by the next series of exhibits. Will you turn to Exhibit 128 and describe it?

[514] A. Exhibit 128 is the first document in the series. It is a copy of letter dated October 24, 1946 to the Postmaster General at The Hague, The Netherlands, signed by Forest L. Henderson, setting forth the proposal relating to exchange of traffic for the Mackay New York Amsterdam circuit.

The next document, Exhibit 129, is a copy of letter from The Netherlands PTT, dated December 24, 1946, indicating PTT's willingness to establish a circuit.

Exhibit No. 130 is Mr. Henderson's letter dated January 22, 1947 to The Hague, setting forth details as to exchange of traffic, rates and settlements.

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Exhibit No. 131 is a copy of a message dated October 17, 1947 to Mr. Van der Toorn aboard the SS. *Veendam*, reporting that FCC has licensed Mackay to communicate with Holland and our readiness to open service on the basis of present rates; division of tolls, accounting and settlement, the same as in effect with RCA.

Exhibit No. 132 is Mr. Van der Toorn's message of October 22, 1947, from the SS. *Veendam*, acknowledging Mr. Henderson's message.

Exhibit No. 133 is a message from Mr. Van der Toorn from Holland through Lima, dated November 20, 1947 to Mr. Henderson suggesting operation through Tangier.

Exhibit 134 is a message dated December 16, 1947, [515] over Mr. Henderson's signature sent via Lima to Mr. Van der Toorn, announcing that Mackay will be equipped to operate through Tangier early in January 1948.

The last document in the series is Exhibit No. 135, a message through Lima, January 7, 1948, to Mr. Henderson, from Mr. Van der Toorn, stating measures were in execution to start trials with Tangier.

Q. Now, will you turn to a consideration of Commercial Cable Company's operations, and describe the operations of that company in Holland? A. The physical operations have been described by Mr. Henderson. The Commercial Cable Company first opened an office in Holland in the city of Rotterdam in 1922, and in that year, I believe, Western Union opened an office in Amsterdam. The radio circuit between Holland radio and RCA in New York was opened in 1925.

Commercial Cables operations have been conducted under contract which has been extended from time to time, and are presently conducted under a contract made with The Netherlands Administration following the war in 1946.

Q. Is Exhibit marked as No. 136 a copy of that [516] contract? A. Yes, this is a copy in the Dutch language,

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together with a verified translation of the contract between commercial Cable Company and The Netherlands Administration, dated July 23, 1946.

Q. What does the contract provide generally with respect to Commercial Cable Company's operations in The Netherlands? A. The contract is largely self-explanatory, and apart from the provision limiting Commercial's operations to Rotterdam, the use of a circuit in the Anglo-Dutch cable and the use of a radio circuit with Mackay in the event of interruption or delay on the cable route, it will be noted that Article 7 requires The Commercial Cable Company to pay over to the Administration all charges which the cable company collects in The Netherlands.

Under Articles 10 and 11 the Dutch Government has free and complete access to all of our accounts and records, including not only a knowledge of who our customers are, but also the actual amount of business they are doing with us. Accounts are kept by the Administration and settlements made with the Company after the Netherlands Administration has retained the amount due it under the contract.

[517] Mr. Wendt: Excuse me, Mr. Gibbons. The contractual provisions to which you just referred didn't first appear in this 1946 contract, did they?

The Witness: I didn't hear the end of that.

Mr. Wendt: These contractual provisions to which you just testified were in the 1922 contract as well as the 1946 contract, weren't they?

The Witness: Not all of them.

Mr. Wendt: Which ones weren't?

The Witness: The one that occurs to me was the reference to the Lima circuit as an interruption route.

Mr. Wendt: Beyond that, so far as Commercial's operations in Rotterdam are concerned, the requirement that the money be paid over to the Dutch, and that they have access to your records and know who

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your customers are and all that, wasn't that provision also in the original contract in 1922?

The Witness: I believe it was.

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[519] Q. What is the Commercial Cable Company's experience in the Netherlands in endeavoring to solicit traffic and build up patronage for its system? A. It has been—and in these days is becoming—increasingly difficult to contend with the appeal which the Holland Government Radio makes to the patriotism of its nationals to patronize the Government-operated route. We have some recent examples of this which our Rotterdam office has sent to us.

Q. Is Exhibit marked 137 for identification such an example? A. Yes. This is an advertisement which appeared in a Rotterdam newspaper on October 25, 1947 together with a translation of the advertisement which states:

"Write on your telegrams for overseas destination 'via Hollandradio PTT' then you are saying in telegram style: 'I want my telegram to be sent via our own national route'".

Q. Is Exhibit marked No. 138 for identification another example of what you have testified about? A. This also shows the strong appeal which the government radio makes. This is an advertising card distributed in The Netherlands, together with a translation thereof which solicits patronage of the Hollandradio PTT [520] route as the national route—the rapid route. It may be noted that this advertisement shows that telegraph users in Rotterdam may have direct telephone connection with the Amsterdam radio service by calling a special number and that no charge is made for the telephone call.

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Q. And now Exhibit 139, Mr. McPherson? A. This is another advertising card which we find being distributed in The Netherlands by Hollandradio PTT. Again, the emphasis being placed upon the fact that the [521] Hollandradio is the national route.

Mr. Gibbons: Before the witness describes the next exhibit, may I ask, Mr. Commissioner, that the witness see the next exhibit? It is the only copy we have.

By Mr. Gibbons:

Q. Will you describe Exhibit 140? A. Yes. This is very interesting. This is the type of telegram blank which the PTT uses in The Netherlands in the delivery of messages. This happens to be a message which came to the Commercial Cable Company in Rotterdam from Swakopmund, a place in South Africa, and it will be noted that the blank upon which this message was delivered shows, in the lower right hand corner, an appeal to the addressee of the message to send his telegrams via Hollandradio PTT. And on the back of the blank there is other printed information, again with emphasis being placed on Hollandradio PTT as the national route for your telegrams.

I am informed that this is the standard type of blank used by the PTT in The Netherlands and that traffic which the Commercial Cable Company turns over to PTT for delivery is delivered on this same type of blank.

Mr. Werner: Does Commercial Cable do any of its own delivery in Rotterdam?

The Witness: Oh, yes.

Mr. Werner: It does.

[522] The Witness: Practically all.

A. (continuing) Now, it is extremely difficult for an American Company which is a foreign company in the eyes of The Netherlands telegraph user to compete successfully

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against the Government-operated radio service in the face of such a national appeal.

The situation is especially difficult today because our agents tell us that representatives of the Government radio service discourage the use of cable service from the Netherlands because to do so is unpatriotic.

We have been advised by our Rotterdam Superintendent that in many cases when a customer wants to file his message by telephone with a Government post office to be routed "via Commercial", he is told that he is acting unpatriotically, that he is hurting his country, that he is saving foreign exchange for his country when he files via Holland-radio PTT, the national service.

Mr. Margraf: I object again to that statement, Mr. Commissioner. It is the rankest kind of hearsay.

[524] The Presiding Officer: It would seem to me that the reports, with such deficiencies as they have, may be admitted, but as to the veracity of the statements made to customers and so forth it would have no standing. Merely from the standpoint of regular business relationships, if this witness gets reports he may furnish such reports in the record, or testify to the content of the reports.

The Presiding Officer: May I make myself clear?

The statements attributed to some third parties are not proper, but the reports to this agent or to this witness, showing the conditions, might be proper for such [525] weight as they might be given later. As to the weight of the evidence, that is a matter to be determined later.

Q. What means of access does Commercial Cable Company have to telegraph users in and outside of Rotterdam?

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A. Apart from messenger delivery and pick-up in Rotterdam, messages are filed and delivered by telephone or telex, which is The Netherlands counterpart of the AT&T teletypewriter service in this country.

Mr. Margraf: Did the witness say those means are outside Rotterdam?

Mr. Gibbons: Will you repeat that? I didn't get that.

The Witness: Apart from the message delivery and pick-up in Rotterdam, messages are filed and delivered by telephone or telex.

Mr. Weidt: In Rotterdam?

The Witness: In other words, in Rotterdam we have the messenger service for both delivery and pick-up, and telephone, and the ordinary means of collection and delivery.

By Mr. Gibbons:

Q. With respect to points outside of Rotterdam, what facilities are available? A. Telephone and telex is available. Other traffic is turned over to us by the Government Service.

[526] Q. And delivered by the Government too? A. And delivered.

Q. But you also have telex available— A. That is true.

Q. —to customers outside of Rotterdam? A. And telephone.

Q. Are there any regulations governing the use of telephone or telex connections between the Cable Company and customers? A. Before the war, and since the resumption of service after the war, Commercial Cable Company—and I believe the same rule applies to Western Union as well as the Government telegraph service—is permitted to offer to local customers—and in our case this means Rotterdam—who file traffic to the value of not less than 2500 florins yearly, a direct telephone connection to be paid for by the company.

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In the case of customers outside the cities where the cable companies and Holland radio have offices, refund of one-half the telex rental is permissible to customers who file 3,000 florins worth of traffic yearly, and refund of the full amount of the telex rental is permissible to customers who file 10,000 or more florins worth of traffic.

The effect of this arrangement is to influence many customers with moderate files to file all of their traffic [527] via Hollandradio, in order to qualify for the maximum refund, instead of splitting their traffic, as was the case for some years, before the war, by giving the cable company the traffic destined to America and Hollandradio the traffic for other destinations, since the telegraph users cannot patronize the cable company for telegraph service from The Netherlands to countries other than America and beyond, whereas Hollandradio is unrestricted as to destination and can accept the customer's traffic for all points, including countries in Europe and the Dutch colonies.

Mr. Margraf: Mr. Commissioner, I object to the first statement as to the effect of these arrangements.

The Presiding Officer: In the latter part of the answer there?

Mr. Margraf: Yes.

The Presiding Officer: Where it refers to the Dutch Communications System being able to accept messages for all parts of Europe.

Mr. Margraf: If I may, I would like to have the answer read back and I can specify the portion.

The Presiding Officers: All right.

(The answer was read as follows):

"The effect of this arrangement is to influence many customers with moderate files to file all of their [528] traffic via Hollandradio, in order to qualify for the maximum refund, instead of splitting their traffic, as was the case for some years

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before the war, by giving the cable company the traffic destined to America and Hollandradio the traffic for other destinations, since the telegraph users cannot patronize the cable company for telegraph service from The Netherlands to countries other than America and beyond, whereas Hollandradio is unrestricted as to destination and can accept the customer's traffic for all points, including countries in Europe and the Dutch colonies."

Mr. Margraf: I object to all of the portion that was read by the reporter.

The Presiding Officer: I will overrule the objection. I think that is a proper interpretation of the business relationship in Holland of Commercial Cable Company.

[530] Mr. Werner: I would like to ask one question, Mr. McPherson.

Does Commercial Cable provide any tie line facilities or telex facilities in Rotterdam itself with customers?

The Witness: Do we have those connections?

Mr. Werner: Do you provide them?

The Witness: Yes, we do.

Mr. Werner. Customer tie lines and call boxes.

The Witness: When you say "provide" do you mean we pay the cost?

Mr. Werner: Yes.

The Witness: I don't think so but I wouldn't say definitely. We do have the connections but whether we have any on which we pay the rental I am not sure.

[531] Q. Mr. McPherson, under the contract between Commercial Cable Company and The Netherlands Govern-

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ment, what traffic is Commercial Cable Company permitted to originate and transmit out of Holland?

I show you exhibit marked for identification No. 136. Between what countries? A. May I read from article 1 of the contract, which states:

“The company undertakes to operate a telegraph connection with London in an office which it will establish in Rotterdam. This telegraph connection shall be used for no other purpose than the following:

“(a) The handling of traffic between The Netherlands and other countries beyond The Netherlands on the one hand (the latter on condition that the traffic is routed over the offices of The Netherlands State Telegraph) and on the other hand America and other countries beyond America (the latter as far as it is or will be agreed upon each time for every destination separately).”

Q. Does that mean that the Commercial Cable Company is not permitted to handle traffic filed in Rotterdam, destined to London, for example? [532] A. Yes, it does.

Q. In connection with the telex arrangements you referred to, and the various allowances of refunds for the customers telex rental, depending upon the value of his business, do you see any advantage to the customer who elects to send all of his traffic over a telex connection with the Holland PTT instead of sending to the Commercial Cable Company such traffic as Commercial Cable Company can handle? A. Yes, because the limitation placed upon the traffic which Commercial may handle restricts his filing with Commercial so that he is less apt to reach the minimum upon which he receives the maximum refund, and he is much more apt to file all of his traffic, both to points which can be served by Commercial and to points which Commercial can't serve, with the government, in order to secure the maximum refund.

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Q. In your opinion, is it possible for the Commercial Cable Company to compete on equal terms with the Government Radio Service in Holland? A. No, it is not.

Q. Will you state why? A. The situation is difficult enough in Rotterdam where the government emphasizes the national appeal and where telephone connection without charge is available to [533] the radio center in Amsterdam, but it is virtually impossible at other points where we are unable to make an effective canvass.

[562] BERTRAM B. TOWER was called as a witness for and on behalf of Mackay Radio and Telegraph Company, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Hartman:

Q. Will you identify yourself for the record please? A. My name is Bertram B. Tower. I am Comptroller of The American Cable & Radio Corporation and its subsidiaries, All America Cables and Radio, Inc., The Commercial Cable Company, and Mackay Radio and Telegraph Company.

[563] Q. Mr. Tower, will you please outline briefly the general corporate and financial structure of the American Cable and Radio System? A. American Cable and Radio Corporation is a holding company holding 100 per cent of the outstanding capital stock of each of All America Cables and Radio, Inc., the Commercial Cable Company and Mackay Radio and Telegraph Company, and 99.98 per cent of the capital stock of Sociedad Anonima Radio Argentina,

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commonly referred to as SARA or Radiar, located in Argentina.

[570] Q. Mr. Tower, will you turn to exhibit marked for identification as Exhibit No. 155 and describe it, please?

[571] As indicated, Mackay had an operating loss of \$1,165,000 for the year 1947 even though the operating revenues were the highest in the Company's history. The operating revenues increased \$1,010,000 as compared with the year 1946; but, at the same time, the operating expenses, represented primarily by wages and material costs, were increased \$1,065,000.

Q. Turning to the next exhibit, Mr. Tower, marked for identification as No. 156, will you describe that exhibit please? A. To show a historical picture and exemplify the growth of Mackay Radio in the twenty years in which it has been in existence, this analysis of total operating revenues of the Company in that period has been prepared. I would like to point out particularly the four columns marked, "Direct Circuit Countries", "Messages", "Words" and "Revenues". As explained in the footnote, that column marked "Direct Circuit Countries" shows the number of countries in each year with which Mackay operated direct [572] circuits for at least six months of that year.

Looking at the year 1937, for example, Mackay had circuits to only seventeen countries and handled 452,000 messages and a little over 9,000,000 words. This picture, obviously, did not change to any appreciable extent over the period of the next five years.

However, from 1942, Mackay was able to establish many additional radiotelegraph circuits so that in the year 1947 we find that Mackay now operates directly with 39 countries, has increased its message volume in the ten-year

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period from 452,000 to 2,870,000, and its word volume has increased more than nine times to a total of 87,750,000.

[585] Q. Mr. Tower, will you please describe the exhibit which has been marked for identification as No. 160? A. We show here a statement of all international telegraph words to and from the United States segregated as between cable and radio telegraph words for the period of 1936 through the first six months of 1947. This exhibit summarizes for convenient presentation the statistics which have been compiled by the Commission and the carriers for the periods shown, and I think the significance of it is that the volume of telegraph traffic as a whole, both by cable and by radio has shown a tremendous increase in the period covered from 261 million words to almost 700 million between 1936 and 1946. This also shows the telegraph traffic handled by the three principal cable carriers, All America, Commercial Cable and the Western Union Telegraph Company, and separately for the radio telegraph carriers the total wordage of Mackay Radio and RCAC with all others grouped.

In the ten-year period, 1936 to 1946, you will note [586] that All America and Western Union have more than doubled their word volumes; Commercial Cable traffic is approximately 2,000,000 words greater in 1946 than in 1936 and has continued to increase proportionately in the first six months of 1947.

I might note here that during the war years, particularly in 1943, 1944 and 1945, Commercial Cable's greatly increased volume was due to the very substantial government file which it handled. During the years 1943 to 1946 Commercial's public volume increased from 20,500,000 to approximately 36,000,000 words, but at the same time its government volume dropped from 30,000,000 to 9,000,000 words.

Going over to Mackay Radio, there is shown an increased word volume from a total of 7,050,000 in 1936 to 74,500,000

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words in 1946—an increase of over ten times and a continued increase in the first six months of 1947 in which period Mackay handled 45,500,000 words.

Incidentally, I might add here that, as shown on the previous exhibit—not on the previous exhibit but on one of the previous exhibits—Mackay's total wordage for 1947 was 87,750,000. RCAC volume in the same period has increased a little over four times from 53,600,000 to 232,700,000, and it would appear that this carrier has shown a slight drop in volume in the first six months of 1947.

Going back to Mackay, it will be noted again that the [587] greatest increase occurred during the year 1943, the year during which Mackay opened new circuits with some of the more important traffic countries of the world. You will see that Mackay increased from 15 million in 1942 to 40 million in 1943.

[591] Q. Will you turn, now, from the graph to the exhibit which has been marked for identification as Exhibit No. 162, and indicate what this exhibit shows? A. This exhibit shows, for the same period as previously described, the breakdown between cable and radio, separately as to outbound and inbound.

It is interesting to note that, looking at the cable telegraph traffic throughout the period, except during the war years, the traffic outbound from the United States has exceeded by substantial amounts the traffic inbound; whereas, in the radiotelegraph field, during the entire period, the traffic is predominantly inbound to the United States.

Q. What conclusion would you draw from this comparison? A. Clearly the radio carriers enjoy a much more [592] advantageous position inbound than do the cable carriers. This undoubtedly is due to the interest which many foreign Governments have in their own radio facilities, with no comparable interest in cable facilities.

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As a result, their very natural tendency is to use their own radio facilities from which they obtain substantial revenue for all traffic within their control, which in a large number of cases is virtually all traffic originating with the landlines or domestic system within those countries.

[597] Q. Will you repeat what you just said in answer to my question as to what your explanation was—what your opinion is as to the explanation for the comparatively rapid growth in Mackay's public volume, please, Mr. Tower?

[598] A. I said that undoubtedly there are service considerations, but I think that much of the growth, referring back to this Exhibit No. 156, must be attributable to the availability of traffic through direct circuit operation.

You will note that Mackay's growth in respect to direct circuits has been from 18 countries served directly in 1942 to 23 in 1943, 26 in 1944, 33 in 1945 and up to 39 by 1947.

I might note here that included in the new countries involved are such principal traffic points as the United Kingdom, France, India and Germany.

It is certainly obvious to me that, with the operation of such new circuits, Mackay has been placed in a much more favorable position both as to competition in the telegraph field and in coverage to serve the public.

[599] Q. Mr. Tower, before the recess you were discussing Exhibit No. 165 and going to refer to Exhibit No. 12 prepared by the Commission in connection with that. Would you go ahead with your statement, please? A. Yes, sir.

I will refer to Exhibit No. 12 here. Take the year 1946, for example, on outbound traffic. The cable carriers handled, as you can see, a little over 60 per cent of the [600] total telegraph traffic to The Netherlands. That is, Commercial Cable and Western Union, the two of them had it together.

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The Presiding Officer: What year?

The Witness: That is 1946.

The Presiding Officer: Proceed.

A. (Continuing) The radiotelegraph carriers handled the balance of some 39 per cent.

On the other hand, the situation was completely reversed, going right down below with respect to the inbound traffic, with the cables handling only 39.7 per cent of the inbound traffic, and the radio handling 60.3 per cent.

This contrast is evident through the entire period and indicates clearly the preference of the Dutch Administration for handling available traffic over its own national facilities.

By Mr. Hartman:

Q. Mr. Tower, I note that, on these exhibits, although Mackay, over the period of years, handled very little traffic for The Netherlands, in the year 1941 it did handle approximately 17 per cent of the traffic to The Netherlands, and 80.5 per cent of the traffic from The Netherlands.

Do you know the reason for this apparently abnormal [601] condition that year? A. It is my understanding that, when The Netherlands was occupied by Germany, prior to our entry into the war, the Germans' routing of this traffic to and from The Netherlands was via Vienna, Austria, for some traffic distribution reason about which I am not familiar.

Q. Mackay at that time was operating the radio telegraph circuit between New York and Vienna? A. Yes, sir.

Q. If you are finished with that exhibit, Mr. Tower, will you please turn to Exhibit marked for identification as No. 166, showing similar information for Portugal?

A. This exhibit again shows the advantageous position of radio on inbound traffic, here again with respect to Portugal.

Bertram B. Tower, for Intervenor—Direct.

Here again I would like to refer to the FCC Exhibit No. 16, which has compiled in columnar form the same information I have included in Exhibit 166.

You will note that, with the exception of the years 1941, 1942, and 1943, that the inbound traffic of the radio telegraph carriers was in excess, percentagewise, of the outbound traffic carried, with the reverse situation experienced by the cable carriers.

Q. With reference to this exhibit, Mr. Tower, did you hear Mr. McPherson's testimony concerning agreement [602] between Western Union and Eastern Telegraph, and the Portuguese Radio Company, and testimony as to the effect of that, and also the effect of the Portuguese decree on the year 1940-1941 and subsequent years? A. Yes, sir.

I think it might be better to look at Exhibit 166 on that.

Q. Yes. I intended to refer you to 166. I am sorry.

Would you indicate the relative position of Commercial Cable Company in the year 1940 and the two years subsequent thereto?

At the same time, it might be well to indicate the position of Western Union and RCAC. A. Yes, sir.

On inbound traffic, the middle of the page, Commercial Cable, in 1940, handled 176,000 words, Western Union 146,000 words, RCA 953,000 words, inbound to the United States.

In 1941, Commercial's traffic had dropped to 99,000 words inbound, whereas Western Union had increased from 146,000 words to 1,945,000.

RCA's dropped from 953,000 to 582,000. In 1942, Commercial's traffic had dropped further to 25,000 words inbound from Portugal.

[603] Western Union had decreased to 1,205,000, and RCA's had increased to 656,000.

Q. In the subsequent years since 1943, the position in regard to cable and radio appears to be what on an inbound basis? A. Cable traffic inbound from Portugal has shown a steady decrease throughout that period.

Bertram B. Tower, for Intervenor—Direct.

I am looking now at the column marked "All cable carriers"—you will note the percentage dropped—whereas the reverse was true with respect to the inbound traffic by radio.

Q. By further comparison, would you indicate for the record, on inbound traffic of all cable carriers for the years from 1941 to date? A. Yes, sir.

In 1941, the cable carriers handled 77.1 per cent of the inbound traffic from Portugal.

In 1942, 65.3 per cent; in 1943, 32.8 per cent; 1944, 29 per cent; 1945, 25.3 per cent; 1946, 22.2 per cent, and in the first six months of 1947, 19.6 per cent.

Q. And conversely, of course, would you indicate the comparable growth in your inbound radio? A. Yes, sir. In the same period, all radio carriers, the percentage of traffic handled inbound to the United States was 22.9 per cent in 1941, 34.7 per cent in 1942, [604] 67.2 in 1943, 71 per cent in 1944, 74.7 per cent in 1945, 77.8 per cent in 1946, and 80.4 per cent in the first six months of 1947.

Q. Looking solely at the RCA Communications, Inc. column, Mr. Tower, it would appear, would it not, that those figures you have just read for all radio carriers are substantially the same as those shown for RCA Communications, Inc.? A. Yes, sir, substantially.

Q. So that, when we speak of all radio carriers, in respect to inbound traffic from Portugal, we are substantially talking about RCAC, are we not? A. We are.

[606] Q. Will you turn now, please, to the exhibit which has been marked for identification as No. 168, and describe that exhibit, please? A. This is a comparative statement of traffic to and from Portugal for the three months of October, November, and December of 1947, showing the breakdown of such traffic for Commercial Cable Company, Mackay Radio, RCAC, and Western Union. Mackay Radio opened its direct circuit with Portugal on October 20.

Bertram B. Tower, for Intervenor—Direct.

Looking now at the message statistics at the top of the page for outbound traffic from the United States to Portugal, you will note that Mackay's traffic in relation to the total traffic to Portugal had more than tripled in the month of December as compared with October.

Percentagewise Mackay increased from 3.8 per cent of the total in October to 11.4 per cent in December. There was only a slight decrease in volume of traffic handled by Commercial Cable in that period.

RCA's volume for the same period dropped from 58.9 per cent of the total to 54.9 per cent; and, similarly, Western Union Cable's volume dropped from 31.5 per cent to 28.9 per cent.

The AC&R group combined almost doubled its traffic volume to Portugal. It will be noted that there was a [607] slight increase in over-all traffic to Portugal, as between the two months.

With respect to the inbound volume, the second group of figures there, Mackay's increase is even more pronounced, increasing from a percentage of 3.9 per cent in October to 22.3 per cent in December.

Here, again, Commercial's volume of inbound from Portugal remained virtually the same, whereas RCA traffic showed a considerable decrease percentagewise from 85.3 per cent to 68.7 per cent.

Western Union decreased from 9.2 per cent to 7.7 per cent. The AC&R System traffic increased more than four times, although there was a slight decrease in the over-all total volume inbound for Portugal.

Mr. Werner: When was your circuit with Portugal opened?

The Witness: October 20.

By Mr. Hattman:

Q. So that, in the period from October to December, the AC&R group improved its position from 5.5 inbound to 23.6 inbound; is that correct? A. Yes, sir.

Bertram B. Tower, for Intervenor—Direct.

Q. Or approximately four times its traffic volume as of October? A. That is right.

[608] Q. That was, of course, while the Mackay direct circuit was in operation? A. That is right.

Q. That is, it was in operation throughout the month of December, was it not? A. That is right.

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[610] By Mr. Hartman:

Q. Mr. Tower, will you go on to exhibit marked for identification as No. 170 and indicate what that exhibit shows? A. This statement shows the relative telegraphic importance of The Netherlands as compared, first, with the general area in which the Netherlands is located, and secondly, with respect to the entire world, for each of the years 1936 through 1946 and the first six months of 1947.

I believe the different columns are self-explanatory, but I might comment that the percentage shown in the fourth column indicates the percentage of the ~~messages~~ between the United States and The Netherlands in relation to the limited area indicated, namely Europe, Africa, and the Near East, as grouped by the Commission in its exhibits contained in Senate Resolution 187.

We have excluded from that area grouping the United Kingdom and Eire, since that traffic consistently constitutes such a high proportion of the total United States traffic that it cannot be reasonably compared with other countries.

The fifth column, headed "Relative Position" indicates the relative importance of The Netherlands with respect to all other countries in the area, again excluding the United Kingdom and Eire.

[611] For purposes of percentages and relative position as indicated in the seventh and eighth columns, the entire world has been used as the basis, including the United Kingdom and Eire.

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You will note that in the three pre-war years—1936, 1937 and 1938—The Netherlands provided over 13.5 percent of the traffic between its area and the United States, and five percent of the total traffic between the United States and the rest of the world. Its relative position in respect to other countries in its area during those three pre-war years was third, and in relation to the entire world, including the United Kingdom and Eire, the Netherlands ranked fourth. During the war, of course, the picture is obviously abnormal. In the first six months of 1947, traffic with The Netherlands constituted 6.5 percent of the total traffic in its area and 2.2 percent of the total world traffic. Similarly, its relative position, both in relation to the area and the world, appears to be less impressive than it was in pre-war. The trend during the period from 1945 through the first six months of 1947, however, indicates that the traffic with the Netherlands is rapidly moving toward its pre-war importance as shown by its improving percentage and relative position.

[612] I might note that the opportunity to compete effectively for 2.2 per cent of the entire world traffic is involved in Mackay's application for a direct circuit to The Netherlands and, unquestionably, that percentage will continue to increase substantially, whether or not it achieves its normal pre-war level of five per cent.

[613] Q. Will you go on, Mr. Tower, to Exhibit No. 171 and discuss the similar table for Portugal please? A. This chart contains similar information to that just described to reflect telegraphic importance of Portugal. I do not believe the exhibit requires any detailed analysis, but might note that in the first six months of 1947 Portugal stood thirteenth in its area and twenty-ninth in its relative world position.

Although the overall traffic volume is not as great with Portugal as the volume with the Netherlands, it is obvious that any radiotelegraph carrier must serve countries of

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the importance of Portugal as well as the Netherlands if it can hope to compete effectively in the telegraph field on a world-wide basis.

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[616] Whereupon THOMPSON H. MITCHELL called as a witness for and on behalf of RCA, having been first duly sworn, was examined and testified as follows:

Direct examination:

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[619] By Mr. Margraf:

• • • • •

Q. What is your position with RCA Communications, Inc? A. Executive vice president in charge of operations.

Q. How long have you held that position? A. Since July 24, 1944.

Q. How long have you been engaged in communications work? A. I received my basic training in communications engineering from the United States Naval Academy, from **[620]** which I was graduated in 1925.

I resigned from the Navy in 1927, and, during that year, I went with the engineering department of Radio Corporation of America.

I have been with RCA ever since, except for the period between early 1942 and July 24, 1944, when I was on leave of absence for military duty.

While in the army I was in charge of operational engineering, Army Communications Service, under General Stoner.

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[625] Q. Now, Mr. Mitchell, what effect did the entrance of RCA into the international radiotelegraph field have upon rates on transoceanic service?—I will have to

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say there: the Radio Corporation of America. A. The immediate effect was reduction in rates. When the Radio Corporation of America began its radiotelegraph operations there had been no reduction in Atlantic cable rates for over 30 years.

The Radio Corporation of America circuit to France was opened at the rate of 20 cents a word, as against a cable rate of 25 cents.

The opening Radio Corporation of America rate to Great Britain was 17 cents, as against a cable rate of 25 cents.

To Norway, it was 24 cents as against a cable rate of 35 cents.

In 1921, Radio Corporation of America reduced its rate to Germany to 25 cents a word, as against a cable rate of 36 cents.

The Poland circuit was opened at a rate of 25 cents, compared with a 32-cent cable rate.

As Radio Corporation of America opened other circuits [626] to Europe and elsewhere, rates were established equal to or below the prevailing cable rates.

Q. Were the early rate reductions made by the Radio Corporation of America without the existence of competition from direct circuits by other radiotelegraph carriers?

A. Yes, sir. At that time there were no other radiotelegraph carriers in existence providing service to European points.

The record will show that many rate reductions were made by the Radio Corporation of America during the 20s when there was no competition by other radiotelegraph carriers.

These reductions occurred when the carriers were relatively unrestricted as to the rate they would charge.

Q. Did the rate reductions reflect the existence of competition between the Radio Corporation of America and the cable companies? A. Yes, sir. At that time, just as

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now, there was vigorous competition between Radio Corporation of America and the cable companies.

The competition came from direct cable circuits as well as indirect cable circuits.

Q. When did the cable companies meet the rate reductions instituted by the Radio Corporation of America?

[627] A. The first reduction in cable rates was made several years after the first reductions by Radio Corporation of America.

Mr. Cearley will discuss, in more detail, the matter of rate reductions.

Q. When was the RCA circuit to Portugal opened, Mr. Mitchell? A. Direct radiotelegraph service was inaugurated between Radio Corporation of America in New York and Companhia Portuguesa Radio Marconi in Lisbon on April 2, 1928, about 20 years ago. The circuit has been operated continuously since that date.

Q. At what rate was that circuit opened? A. 30 cents a word.

Q. What was the cable rate when that circuit was opened? A. 33 cents a word.

Q. Will you describe or state how the operations were conducted at first? A. Service was commenced on an automatic morse basis, using short wave directional beam transmission and diversity reception.

This was the newest and most efficient method of operation at that time.

Q. Have any steps been taken to modernize the equipment used on the circuit to Portugal? A. Yes. In line with the program of RCA to convert its operations from morse to printer, negotiations were initiated with Portugal by RCA for the conversion of the circuit to printer operation.

RCA offered to provide a minimum of necessary equipment on a trial basis. Such equipment was provided and tests were conducted which indicated the desirability of operating a printer circuit.

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Mr. Werner: Did you mention the year that these negotiations took place?

The Witness: It is my recollection that the negotiations took place in 1945 or 1946.

By Mr. Margraf:

Q. Was the circuit ever operated commercially on a printer basis? A. Yes, sir. Printer operation between New York and Lisbon was started on July 30, 1947, and continued until about the time the Mackay circuit was authorized. RCA was then asked by Portugal to revert to the old-fashioned morse operation.

Our argument was to no avail, although the Portuguese expressed a desire to retain the printer equipment with the intention ultimately of using it again.

Q. Did you later learn the reason for Portugal's [629] reversion to the morse method? A. Yes, sir. When I visited the Portuguese company on November 11, 1947, one of my primary objectives was to persuade the Portuguese management again to resume the more modern and efficient form of operation.

I was unable to accomplish this objective, because I found the Portuguese using the same transmission, reception, and terminal equipment for their operations, both with RCA and the Mackay Company, and because the Mackay Company did not have equipment which would cooperate with that in Lisbon, it was necessary for Lisbon to work both circuits by the old-fashioned morse method which both of its correspondents were equipped to employ.

Q. Have you any indication whether Portugal will resume operation with printer equipment? A. Yes. The Portuguese officials expressed to me unqualified preference for the radioteletypewriter form of operation, and cited to me the fact that they had already placed on order, with vendors in the United States, not only a considerable additional quantity of printer equipment, but also frequency

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shift keyers and other station apparatus designed to improve the quality of the fundamental circuit.

It was admitted by them, however, that even with this additional equipment they would be unable to operate by [630] the printer method with us if they were going to be required to operate with Mackay on a Morse basis.

Q. What is the status of the printer equipment to the Portuguese? A. It was shipped several weeks ago and should be in the process of installation now.

Q. Do you anticipate that the printer equipment will be placed in operation as soon as possible after it is installed in Portugal. A. I hope that that will be done. However, if Mackay should be permitted to operate a direct circuit to Portugal, I am afraid that it will not be possible for RCA to operate on a printer basis with Portugal.

Portugal undoubtedly would want to use the same equipment to operate with both RCA and Mackay, so it would be necessary for us to use morse equipment.

Mr. Werner: May I interpose a question there?

Why couldn't Portuguese Administration operate with both you and Mackay on printer equipment?

The Witness: They can if Mackay is equipped to operate with printer equipment. At the time I was there I was told they were not.

By Mr. Margraf:

Q. Will you explain your last answer to my last question? Why do you believe that is so? [631] A. Because they propose to use the same transmission and reception facilities to operate with us both. This would, of course, degrade the service, but the only alternative would be complete duplication of facilities, and this would be too expensive for them.

Q. What classes of service are available to RCA for traffic with Portugal? A. Telegraph, program transmission service, and unilateral press.

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Q. Has RCA had any discussion with Portugal for institution of other classes of service? A. Yes, sir. When, as, and if the printer operation is permanently established between Portugal and the United States it will be possible to inaugurate volume press service and conference service.

Furthermore, it is contemplated that radiophoto service will be inaugurated after technical standards have been established at the international conferences now in progress in Europe.

We have contemplated establishment of radiophoto service with Portugal for several years. Very satisfactory tests were conducted with them during the latter part of 1946.

While we do not anticipate a great volume of traffic, the service, nevertheless, will be available to the public.

[633] Q. When did RCA inaugurate direct radiotelegraph service with The Netherlands? A. Direct radiotelegraph service was inaugurated by Radio Corporation of America in New York and the Postal Telecommunications services of The Netherlands Government on November 1, 1926, or 22 years ago. Except for the enforced cessation of operations during the three war years, it has continued ever since.

Q. Will you discuss the method of transmission which was used at first and the steps which were taken later to improve the service? A. This circuit initially utilized the costly long-wave method of transmission and reception which was the accepted medium of transmission over such circuits in that day.

Morse code was used exclusively, and while the automatic mode of transmission was employed, reception consisted of a combination of aural and tape transcription. Prior to the inauguration of this service, Holland's radio activities had been primarily in the marine field. Because of this, RCA arranged for a representative of The Nether-

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lands Government to visit the United States and to observe its methods, practices, and procedures.

[634] Upon the return of this representative, the RCA methods and practices were adopted, with a resultant great improvement in operating conditions.

Traffic began to flow freely with a minimum of delay. During this period of long-wave operation, RCA was busy pioneering in the field of short-wave transmission, and as quickly as the new facilities and techniques had been reasonably developed, this form of operation was introduced in the Holland circuit.

The public acceptance of this service indicated the desirability of increased circuit capacity, and on December 16, 1937, about 11 year ago, multiplex tests were commenced between New York and Amsterdam. These tests employed equipment which had been developed in the RCA laboratories.

After demonstration of the satisfactory operation of the multiplex equipment, traffic was handled over this equipment commencing January 11, 1938, about ten years ago.

This method of operation continued until The Netherlands was overrun by the Nazis in the spring of 1940. During the ensuing war years, our cooperation with the Dutch was necessarily limited to those of their colonies which had not been invaded, and to such of their representatives as were in exile in England or in The Netherlands. [635] Embassy in Washington.

Q. Will you describe the steps which were taken by RCA to restore radiotelegraph service to The Netherlands, as the war drew to a close? A. Foreseeing the early liberation of the Lowlands we addressed a letter on September 6, 1944, to the Board of War Communications, advising them of our readiness and desire to resume operation with our former correspondents, and requesting authority of the Board to enter into the necessary negotiations to accomplish this.

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The Board of War Communications, by its letter of September 18, 1944, granted this authority, with the understanding that the Board was not at that time deciding that such service was yet desirable.

We promptly commenced our negotiations, however, and on September 20, I sent a message to Mr. H. Van der Veen of The Netherlands Ministry of Colonies, then situated at Mexborough House, 17 Berkeley Street, London, the pertinent portion of which follows:

"We have now been authorized by our government to open negotiations looking to the eventual re-establishment of New York-Netherlands direct radio circuit whenever it may become practicable. We shall, of course, be most happy to resume the cordial and cooperative relations which existed between [636] RCA Communications and The Netherlands Administration for so many years and to do everything in our power to assure a direct communications circuit between New York and The Netherlands, even more efficient than before. Our authorization to negotiate does not mean that we have been licensed by the FCC to communicate with The Netherlands, nor does it mean that the question as to the desirability of a circuit has been determined by the relevant authority."

A. (continuing) On September 28, 1944, we received, through The Netherlands Embassy in Washington, a telegram from The Netherlands Minister of Home Affairs, the pertinent part of which follows:

"The Netherlands Government is anxious, in view of many years of cordial relations, to cooperate in re-establishing the direct communications circuit between The Netherlands-United States, based on pre-war agreement with RCA Communications, as

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[637] soon as conditions permit. I will advise you when suitable time arrives for resumptions."

Subsequently, The Netherlands Government authorities on November 6, 1944, advised that The Netherlands Minister for General Affairs "has applied for commission and frequency assignments for resuming service."

It was our understanding that this request was then pending before the Allied Military Authorities, and that resumption of the direct service would be through temporary radio stations located in the then liberated portion of The Netherlands.

This information was communicated by letter on December 10, 1944, to the Board of War Communications.

By Mr. Margraf:

Q. What did RCA do to help the Dutch obtain equipment for restoration of the service? A. At this stage of the war RCA Communications was operating several temporary stations in Europe at the request of the United States military authorities. The European manager of RCA, Mr. Thomas D. Meola, a competent engineer, who had general supervision over all of the Company's activities in Europe, was instructed to proceed to the liberated portion of The Netherlands, if possible, and to obtain from the Dutch authorities information as to what they needed in the way of technical and material [638] assistance.

Early in February, 1945, through the cooperation of the Public Relations Division, and with the approval of the Supreme Headquarters, Allied Expeditionary Forces, Mr. Meola succeeded in obtaining aerial transportation to the vicinity of Eindhoven, Holland, where he established contact with the then telecommunications director of The Netherlands Mr. Van der Linder and several members of his staff who were directly concerned with re-establishment of external communications from that country.

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Mr. Meola reported that none of these persons had been known to him previously, and that all of the older officials, with whom we had previously corresponded, were still in the custody of the enemy, who, incidentally, still occupied The Hague and Amsterdam.

Mr. Meola's report of February 19, 1945, covering his trip, contained the following paragraph:

"The principal properties of this Administration are still in enemy hands, so that, at the site from which they propose to start operations, very little equipment is available. I looked over what they have and it really is quite pathetic and inadequate."

He listed, as the equipment with which they proposed to start operations:

- One RCA AR88 receiver
- [639] One 1.2 kw transmitter
- One perforator
- One recorder
- Two tape pullers
- One monitor receiver
- No typewriters
- One Boehme keying head
- Only 20 rolls of perforator tape

He stated further that the operating personnel was limited, due to the fact that Amsterdam and vicinity were still in enemy hands, but that, with his assistance, he hoped that this little station would be ready for exchange of traffic with RCA New York on or about March 1, 1945. He emphasized, however, their great need for additional equipment and supplies.

In view of their desperate shortage of facilities on March 19, 1945, a message containing the following was dispatched by RCA to Gentel, Eindhoven:

"Anticipating eventual traffic volume similar to pre-war load, we are somewhat disturbed at the

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understanding that you are rather handicapped as to high speed terminal apparatus.

"We have, at our Paris office, latest modernized printer terminal, complete for immediate installation, and with concurrence of military authorities [640] would be glad to permit installation at your end, if that would assist.

"Have no doubt as to its effective operation over existing New York-Holland circuit. Kindly confer with military authorities and advise."

On March 21, 1945, we received a message from Gentel, Eindhoven, containing the following:

"Re your A-3. Kindly accept your offer for terminal apparatus. Will connect with military authorities for transport from Paris to Eindhoven.

"Signed, Director General, PTT, in the Netherlands."

On March 27, 1945, we instructed our manager in Paris, Mr. W. V. Moore, to see that the desperately-needed equipment was transported to Holland, and, on April 6, we were telegraphically advised by him that transportation had been arranged, and that he personally would accompany the shipment.

Accordingly, the equipment was sent to Holland and was installed.

I shall not burden the record with the details of the personal and material assistance which was given thereafter.

Suffice it to say that there was much of both, and some of it was accomplished at considerable personal risk. [641] on the part of the individuals concerned.

Q. When was the service with the Netherlands finally restored? A. Morse operations were resumed on March 5, 1945. On May 30, 1945, printer tests were started, and

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shortly thereafter regular printer operation again was established.

Q. Have there been any recent developments in the method of transmission used in The Netherlands? A. Yes, sir. RCA last year began operation in each direction of its circuit with The Netherlands, with a new development known as T. O. M., which stands for "telex on multiplex".

In the detecting and correcting of errors, this method is an improvement, even on the conventional seven-unit error-detecting system.

Q. Before you describe the operation of T. O. M.—or we will refer to this as TOM, for brevity's sake—will you explain the conventional seven-unit system? A. The seven-unit system was developed by RCA as a means for detecting errors that occurred due to causes such as fading, static, interfering signals, and other disturbances.

Such errors may occur in any method of transmission, whether printer or Morse.

[642] When such a failure occurs on a morse or a five-unit printer circuit, an incorrect letter may be recorded at the receiving end.

When such failure occurs on a conventional seven-unit circuit, however, an appropriate symbol is printed and a bell is rung.

The operator at the receiving end is thus informed of the existence of an error. When this happens, the operator immediately dials for a rerun or a pull-back on the tape-stop unit which is a part of the seven-unit equipment, and which permits the request to be forwarded to the foreign terminal without interrupting regular outbound message traffic.

The correction is then made by the sending operator repeating the previously garbled character.

Q. Now, will you explain how TOM improves upon the conventional seven-unit system? A. In effect, TOM causes correction of a mutilated signal to be made automatically.

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instead of by the work of the receiving and sending operators.

In the conventional seven-unit operation, errors are merely detected and called to the attention of the operator. Correction is made by the request of the receiving operator for repetition of the signal, and by the sending operator repeating the signal.

[643] With TOM, the error is detected and correction is made automatically.

Q. Will you explain briefly, Mr. Mitchell, how this system works? A. Briefly, the system involves the transmission of intelligence over the radio path in both directions keyed in the mutilation—indicating seven-unit code. The code arrangement is such that every translatable character is represented by a combination of three marking and four spacing elements.

Any signal distortion or mutilation of different aggregate composition causes a request for repetition automatically to be transmitted over the return channels to the originating equipment.

The mutilated character is not printed, but a repetition of this character is automatically transmitted, and it is printed.

In order to gain the further advantage of tape relay operation, the keying elements, as employed in the seven-unit circuit, are fed through a converting medium from five-unit terminal equipment.

Similar media effect a reciprocal translation at the receiving terminal.

Q. Is the TOM system used on any other RCA circuits? [644] A. No, but we are investigating the desirability of using TOM on those of our circuits where transmission conditions are most difficult.

[649] Q. Will you describe in general terms the work which RCA has done to convert its operations from morse

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to printer? A. RCA has consistently led this industry both at home and abroad in technological advancement, operating techniques, service improvements and rate reductions.

We inaugurated the first commercially operated radio-teletypewriter back in 1932 between San Francisco and Honolulu.

In the years that followed, similar operation was instituted between a number of RCA points until at the beginning of the war communications between points under RCA control were mostly by the printer method.

During the war, RCA, like other commercial companies, contributed its know-how, manpower, and equipment toward the Army development of the globe-encircling Army communications service.

All of us learned from this experience, in which the [650] advantages of printer operation and semi-automatic tape relay methods were demonstrated.

Immediately upon my return from military duty late in 1944 RCA set about to accomplish a commercial version of this fine system in order that it might achieve greater speed, accuracy, and efficiency of operation.

The plan envisioned standardization of operations on a printer basis with facilities for automatic and semi-automatic relay of traffic at strategically chosen points within our system and at an additional station to be built in Tangier.

This has largely been accomplished. Approximately 70 per cent of our traffic out of New York and over 80 per cent of our traffic out of San Francisco now circulates via printer.

Q. Will you list the RCA circuits which have been printerized? A. The following circuits are now operated by the printer method in both directions between San Francisco and New York, and between the United States and the following countries: Switzerland, Italy, Cuba, Tangier, Russia, Portugal, Haiti, Surinam, Dominican Republic, Colombia, Mexico, Sweden, Brazil, Germany,

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Curacao, Canada, Argentine, Australia, Venezuela, Hawaii, Jugoslavia,—the Jugoslavia station is operated intermittently because of lack of [651] sufficient equipment in Jugoslavia. However, it is operated by the printer.

England, France,—and I will list Portugal, although it has temporarily been suspended—Spain, westbound only at present, Geneva—that is, the United Nations circuit—The Netherlands, Egypt—and this one again is operated intermittently due to the necessity for forked operation from Egypt with Mackay in New York—Australia, Okinawa, Korea, Philippine Islands, and China.

Some of the foregoing were installed in 1945, but most of the installations were in 1946.

Q. Mr. Mitchell, I think you read Australia twice. Did you mean Austria as one of those? A. I meant Austria, if I said Australia.

Q. Is it a fact that the circuit to Austria is printerized?

A. Yes, sir. A substantial proportion of the essential equipment has been delivered and installed in the following countries and printer operation is expected during 1948.

Norway, Chile, Poland, Iceland, Greenland. It is expected that equipment will be provided and printer service may possibly commence during 1948 with the following countries: Panama, Turkey, Greece, Finland, Siam, French Indo China, Japan, and Iran.

[652] Q. Will you tell us on what RCA circuits multiplexing is employed? A. The multiplex method is employed between San Francisco and New York, and between the United States and the following countries: Switzerland, Italy, Tangier, Argentina, England, The Netherlands, Hawaii, Philippine Islands, Australia, China, and France.

Q. How long has RCA used multiplex? A. RCA completed its original design of the time division multiplex equipment in 1934. Installations within the system commenced shortly thereafter and continued until the last which was installed in Tangier in 1947.

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Q. Does RCA have plans for use of multiplexing on circuits in addition to those that you have named? A. Yes. There are several heavy circuits to which we expect to apply the method when equipment becomes available.

Q. On what RCA circuits is frequency shift keying employed? A. Frequency shift keying is now employed between New York and the following points: Cuba, Switzerland, England, Tangier, Haiti, Dominican Republic, Sweden, Argentina, Brazil, Puerto Rico, San Francisco, The Netherlands, Spain, and Geneva.

Frequency shift keying is likewise now employed between [653] San Francisco and the following points: Manila, Hawaii, China, Korea and Japan.

Also frequency shift keying is employed from our Tangier station. In other words, it is now being employed between all points over which RCA has control, and with those of its correspondents who have been able to obtain and install such equipment.

Q. Does RCA have plans to use frequency shift keying on additional circuits? A. Yes. Just as quickly as the necessary equipment now in the process of manufacture becomes available.

Q. What is the method of reception used on RCA circuits? A. We employ the method of space diversity reception.

Q. Would you describe in general terms how space diversity reception operates, and tell its advantages over other methods of reception? A. Space diversity reception takes advantage of the fact that fading of the received signal does not occur uniformly in fairly closely separated geographical locations.

Q. Why does RCA use diversity reception? A. Because, in the employment of short wave signals, fading occurs both frequently and drastically. When this happens, the signal at a given point of reception drops to a level where it ceases to be useful. One of the characteristics [654] of short wave propagation is that at a nearby point the

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signal does not necessarily fade simultaneously to the same degree.

Space diversity reception takes advantage of this phenomenon and combines the received signals from three points spaced approximately 1,000 feet apart, providing a resultant signal which is of uniform intensity.

The advantage of diversity reception therefore is to make possible uninterrupted reception of signals from a distant point for the effective period of usefulness of the particular frequency.

Q. By whom was diversity reception invented and by whom was it developed? A. The principle was first conceived by Dr. H. H. Beveridge, an RCA engineer, in the 1920s.

Dr. Beveridge is now Vice President in Charge of Research and Development of RCA Communications, Inc. The method has been in use by RCA ever since.

Q. Mr. Mitchell, would you describe very briefly the types of antennas generally used by RCA—receiving antennas? A. We use the fishbone antenna on the most difficult circuits. We use rhombic antennas quite extensively where they are applicable. Those are the two types of antennas that we principally use.

[657] Q. You have discussed the conversion from morse to printer, Mr. Mitchell, would you describe, for the record, the method of operation of the printer tape relay system? [658] A. It is a system by which radio messages may be relayed from one point to another without manual reprocessing. Once the message has been processed into the form of five-unit tape, it need not be typed again.

At each receiving station along the route, the receiving apparatus reperforates the tape in five-unit code which is then fed into other apparatus for virtually instantaneous transmission to the next relay point.

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The advantages of such a system in speed of service and economy of trained personnel are obvious. Accuracy is also greatly improved because of the elimination of manual processing, and the human errors which creep into each such reprocessing.

Q. Would you show, by an example, the advantages inherent in the printer tape relay system over morse?

A. Let us consider a hypothetical case employing each of the techniques. For example, suppose a message originates in The Hague and is destined to the State Department in Washington. If the morse system is used the message would receive the following handling: it would be transmitted by hand from The Hague, received by another operator in Amsterdam, transmitted by another operator in Amsterdam, received by yet another operator in New York, transmitted by still another operator in New York, received by one more operator in Washington, then delivered by a messenger or [659] transmitted by a direct tie line into the State Department, in which case the message would have been transmitted by at least four different operators, and received by at least three different operators.

In other words, this poor little message would have been subjected to at least seven excellent opportunities for mutilation through human error, to say nothing of the time delay which inevitably would accrue.

A. (Continuing) Now, if this same message were handled through the printer semi-automatic tape relay system it would be hand processed—that is, transmitted only once, and that would be at its origin in The Hague. Thereafter the product of the reception facilities at each of the intermediate points, namely a typed reperforated tape, would be fed into the transmitting position at each of these points until ultimately the message would appear in page copy form on the machine in the State Department. It would have been [660] exposed to human mutilation only once,

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at its origin, and the transmission would have taken place much more rapidly.

Q. Mr. Mitchell, can morse be operated with the five-unit relay system? A. No.

Q. Assuming that a message originated at a point where morse was used and terminated at a point where printer system was used, what reprocessing steps would be required? A. A message originating at a point where morse message was used would be received in New York by manual transcription from tape. The resulting hard copy message would have to be reprocessed by hand into five-unit tape in order to initiate it into the tape relay system. Thus two manual processings would be required.

Thereafter, as long as it circulated in the tape relay system, no further hand reprocessings would be necessary.

[662] If Surinam, Portugal, or The Netherlands, operated the circuit with Mackay on a forked basis with the RCA circuit, how would that affect the handling of traffic on that RCA circuit in the RCA printer relay system? A. If any of the foreign circuits were operated on a forked basis with the RCA and Mackay points it would mean that the operations probably would have to be by the morse method, since insofar as I know Mackay does not utilize five-unit printer equipment to European or South American points.

Portugal, for example, would not be able to use the printer equipment which it had planned to use. Surinam would have to revert to morse on its RCA circuit. If that occurred, the benefits to the public which are obtainable by the use of semi-automatic tape relay would be lost.

Q. What method of keying is used on the Surinam, the Portugal, and The Netherlands circuits? A. Frequency shift keying is now being used to The Netherlands. On and off keying is being used by The Netherlands west-

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bound. On-off keying is being used to Surinam and to Portugal.

Q. Does RCA have plans for employing frequency shift keying entirely to these points? [663] A. Yes. There are plans for replacing on-off keying with frequency shift keying.

Q. What is the advantage of frequency shift keying?

A. Frequency shift keying improves the quality of the reception by lessening the effect of signal disturbances due to fading, static, or many other causes.

Under conditions of such circumstances, reception with on-off keying may be subject to so many errors that the circuit becomes unworkable for a time.

Frequency shift keying permits reception with such improved quality that under many similar conditions the circuit can be kept in operation. With on-off keying, a space between dots and dashes, for example, is transmitted by the transmitter going off the air for a fraction of a second. Dots or dashes are indicated by the length of interval that the transmitter remains on the air. Magnetic disturbance may cause a crackle when the transmitter is off, causing the receiver to record a signal. This may create dots where there would be none, or lengthen dots into dashes, thus creating errors.

Q. How does frequency shift keying correct this condition? A. By sending signals, whether dots or dashes, in one frequency, and spaces in another slightly different frequency, magnetic disturbances are considerably overcome. The dis- [664] turbance might lengthen the signal for a space, for example, but because such a signal comes in on only one frequency, it can't result in substituting a dot for a dash or a space or a dash for a dot.

Q. When do you anticipate that frequency shift keying will be used on these three circuits about which we have been talking? A. Surinam and Portugal have both ordered the frequency shift equipment and as soon as they receive

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it we expect that they will use that method of operation. It is expected that Holland will likewise change from west bound on-off keying to frequency shifting keying in the near future.

Q. How might the grant of the Mackay applications affect the time schedule for employment of frequency shift keying? A. Where the foreign correspondent and RCA are equipped to operate with frequency shift keying and the Mackay Company is not so equipped, it is practically certain that the foreign correspondent who would be required to work with both Mackay and RCA would insist upon reverting to the less efficient on-off method, and RCA would, of necessity, have to follow suit.

Q. Now, Mr. Mitchell, will you describe your present operations with the Netherlands? A. In our normal operations with Amsterdam we utilize one channel of a four-channel RCA time division multiplex [665] system. For the present we are also using an additional morse circuit for the reason that the Dutch are inadequately supplied with printer terminal equipment which would permit them to utilize the remaining three channels of the multiplex.

Likewise, it is presently necessary for us to operate by the morse system during the night hours, because of a shortage of technically trained personnel in Holland. The Dutch have assured us that they have adequate personnel in training to rectify this situation. There is no question in my mind but that as quickly as they are adequately supplied with equipment and technically trained personnel, the multiplex system will be used exclusively.

Q. Is the present method of combination of morse and multiplex the most efficient kind of operation? A. No. It is not. It is simply a temporary expedient.

Q. What do you mean by that? A. Simultaneous operation by the two methods requires two full complements of frequencies in each direction, duplication of transmitters and receivers and their associated antenna facilities. The more highly skilled and expensive radio operator class of

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operating personnel is required in addition to the multiplex operators used with the preferable system.

Q. How might the grant of the Mackay application for [666] a circuit to the Netherlands affect the ultimate conversion to exclusive printer operation? A. It is my belief that it would retard such single type of operation, if not permanently forestall it.

Q. What is your reason for that statement? A. If the Dutch find it necessary to operate on a forked basis with Mackay and ourselves, and Mackay is not technically fitted to operate by the multiplex method, it will be necessary for the Dutch to work by the method which each of us can operate, which is the old fashioned morse method.

Q. Will you describe your present operation at Portugal? A. At present, we are working with Lisbon with a high speed morse circuit. The circuit is open on a 24-hour basis. As I have said, we operated with printer until about the time the Mackay circuit was authorized. Since Portugal operated a forked circuit with Mackay and RCA during the period of Mackay's operation it was necessary to revert to morse.

We look forward to restoring the printer operation soon unless the Mackay application is granted.

[667] By Mr. Margraf:

Q. Will you refer to 173. Was this exhibit prepared under your supervision and direction, Mr. Mitchell? A. Yes, sir.

Q. Is it true and correct to the best of your knowledge? A. Yes, sir.

Q. What does Exhibit 173 show? A. It shows the capacity of RCA circuits to The Netherlands, Portugal, and Surinam. It shows the hours of operation, the method of operation, the capacity in words per hours, the average present traffic, the excess or reserve capacity, the industry

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traffic, RCA participation, and the percentage of the RCA participation to the volume of the industry. . .

[668] Q. Are these things shown separately for inbound and outbound operation of circuits? A. Yes. Two pages.

Q. Turning to the exhibit, Mr. Mitchell, under the column "capacity" and then in parentheses "words per hour" and parentheses again "60 per cent", what is the meaning of that heading? A. At an agreement which was reached between staff members of the FCC and representatives of the operating companies, it was agreed that 60 per cent of the theoretical capacity of a printer channel would be used in estimating its effective capacity.

In the column there which shows words per hour, in the case of The Netherlands, for instance—

Q. This is Netherlands outbound? A. Netherlands outbound, yes. That takes four printer channels at 60 words per minute, and one morse channel which has been assumed to operate at that same speed, although of course it is capable of operating at a higher speed; and takes 60 per cent of the theoretical capacity, and arrives at a figure of 10,800 words per hour effective capacity of the five channels.

Mr. Werner: You took the capacity of all five channels.

The Witness: Yes.

By Mr. Margraf:

[669] Q. 60 per cent of the theoretical capacity? A. 60 per cent of the theoretical capacity.

Mr. Werner: But you don't use the three remaining channels of your four mux channels at all?

The Witness: Not at the moment but it could be. The channels are there and they could be used.

Mr. Gibbons: May I ask a clarifying question at that point?

The Witness: Yes, sir.

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Mr. Gibbons: Are those channels in that mux used for communication with places other than Amsterdam?

The Witness: No. Not at the moment.

Mr. Gibbons: They could be, though.

The Witness: They could be.

By Mr. Margraf:

Q. Are the other figures in that column and in the corresponding column on page 2 of the exhibit obtained through the same method? A. Similar computation, yes.

Q. How were the figures in the column headed, "Average present traffic, words per hour, 6 a.m./6 p.m." obtained?

In order to explain that I think you will have to refer to Exhibits 174 and 175 which have been marked for identification. A. These exhibits 174 and 175 tabulate the hourly [670] movement of traffic on RCA circuits to Netherlands, Portugal, and Surinam, on the two dates of March 3, 1948, and April 16, 1948. On the basis of these average hourly figures, we have arrived at the average hourly figure which appears in the column which you have mentioned. In the case of The Netherlands, there it is 704 words per hour.

Q. This is outbound? A. Yes.

Q. As indicated on page 1 of Exhibit 173? A. Yes, sir. It is interesting to note there that with RCA's percentage of the industry volume which is 29.8—or let's call it 30 per cent, or a third—that if we multiply the 704 average words which it now handles by three, we get 2112 words, which is considerably less than the capacity—that is, would represent the capacity—of the entire industry and it is very considerably less than the reserve capacity which RCA already has to The Netherlands.

Q. And that reserve capacity is shown, is it not, Mr. Mitchell, on the fourth from the last column? A. That is correct.

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Q. On each of these two pages? A. That is right. In that particular case, 10,096 being simply the difference between the 10,800 and the 704 words which are the average handled, leaving the reserve [671] capacity of 10,096.

Q. Is it your conclusion from what you have said, Mr. Mitchell, that from the standpoint of technical equipment, that RCA could handle the entire industry volume of traffic?

A. The exhibit clearly indicates that RCA now has adequate reserve capacity for this purpose.

[674] Q. Turning to Exhibits 174 and 175, it is shown on the face of the exhibits, of course, that 174 relates to hourly movement of traffic on March 3, 1948 and that 175 relates to hourly movement of traffic on April 16, 1948.

From an observation of these two exhibits, Mr. Mitchell, what do you have to say about the peak load conditions on these three circuits? A. I think the exhibit clearly indicates that RCA now has adequate reserve capacity to handle all of the traffic even in the case of peak loads.

Q. Do these exhibits not show the peak periods during the day when traffic flows? A. Yes, they do.

Q. Do you have any observation to make on the ability of RCA to handle the entire, or a substantial portion of the entire industry traffic even during peak periods? A. Yes. I should say even within the foreseeable [675] future that that would be true. None of the circuits is operating at near capacity at the present time. While The Netherlands is a fairly busy one we have much reserve capacity. There is also much reserve capacity on the other circuits.

Q. If the traffic to these points should increase on any of these circuits to such an extent that the present capacity is exceeded, Mr. Mitchell, would RCA enlarge the capacity to meet the demand? A. RCA would certainly do that. I don't anticipate that it will be necessary, however.

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[684] Q. Did you make a trip abroad last year, Mr. Mitchell, during which you visited the Netherlands and Portugal? A. Yes, sir.

Q. During that trip, did you observe the commercial activities of RCA's competitors in The Netherlands and Portugal? A. Yes, I did.

Q. Will you discuss the commercial practices of RCA's competitors in The Netherlands? A. The cable companies, both Western Union and Com- [685] mercial Cable Company, have offices in The Netherlands. Western Union maintains a public office in Amsterdam to which there extends from England a wire connection and a Western Union submarine cable from the United States. Having a public office in Amsterdam, Western Union retains its commercial identity. It distributes its own blanks and has a team of salesmen operating in the city. It performs its own pickup and delivery service in Amsterdam and renders its own bills to its customers for the services rendered.

I understand that Western Union has one or two salesmen operating also in each of the cities of Rotterdam and The Hague.

Commercial Cable Company maintains a public office in Rotterdam. Its commercial activities there are much the same as the activities of Western Union in Amsterdam. I believe that Commercial has one or two salesmen in Amsterdam and The Hague. All of the telegraph carriers in The Netherlands conduct active solicitation for traffic. I understand that each of the commercial companies pays a commission to agencies. This has resulted in the inevitable racketeering by such people as hotel employees who accept traffic from the public and route it as they see fit. Where this occurs, it is neither the user nor the carrier which routes the traffic, but a third party in the person of a hotel employee. [686] The commercial activities of RCA's competitors in The Netherlands result in intensive competition for the telegraph traffic.

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Q. Upon the basis of your observations in Portugal will you discuss the commercial activities of RCA's competitors there? A. Although neither Western Union nor Commercial maintains its own commercial office in Portugal, both of them employ solicitors for traffic to be routed over their respective systems.

While the commercial activities of these companies are not as extensive in Portugal as they are in the Netherlands their activities in soliciting traffic contribute to the maintenance of competition for the telegraph business.

From the knowledge which I have about the intensive efforts which are made by the carriers to obtain the telegraph traffic with these countries, I can say most definitely that any impression which may exist that RCA has no competition is completely fallacious.

[681] Q. Mr. Mitchell, do you have any information on the attitude of foreign administrations, as to whether during the 1920s and 1930s these administrations preferred to work with one or two American carriers? [692] A. Yes. It is my belief that there generally prevailed among foreign administrations a preference to work with one American carrier rather than with two or more American carriers. The contracts between RCA and its foreign correspondents will show that many of them either expired or were terminable at the option of the foreign correspondent prior to the entry of the consent decree to which reference has been made.

For example, the following contracts either expired or could be terminated by the foreign correspondent at the date indicated: Russia, April 18, 1930; Holland, November 15, 1931; Dutch East Indies, February 20, 1931; Venezuela, November, 1933; Surinam, November, 1933; Japan, December, 1933.

With the exception of Japan, Mackay did not succeed in opening a circuit to any of these countries prior to the renewal of the agreement with RCA.

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Q. Did they open a circuit to any of the countries, with the exception of Japan? A. In the case of Japan, Mackay did open a circuit in 1934. It is reasonable to conclude that if the other countries which I have named desired to operate with two American carriers Mackay would have been able to open circuits with them.

[694] LON A. CEARLEY, was called as a witness for and on behalf of RCA Communications, having been previously sworn, was examined and testified as follows:

Direct examination by Mr. Hawkins:

Q. Mr. Cearley, will you state your full name and position with RCA Communications? A. My name is Lon A. Cearley. I am controller of RCA Communications, Inc.

Q. What are your duties as controller? A. As controller, I am responsible for the maintenance of all accounting records of the company, am required to prepare and interpret all financial statements of the company and to consult with and advise management on all matters affecting the financial position of the company.

[697] Q. Exhibits 27 and 29 are in effect a study of the operation of the circuit, are they not? A. That is true, because these two exhibits show what the radiotelegraph circuit of RCA Communications actually handled in the way of traffic between the United States and Portugal, including transmitting traffic during the period indicated.

[698] Q. From these two exhibits, can you give an estimate of the amount of traffic diverted from RCA Communications to the Mackay circuit during the time it was in operation? A. From these statistics alone it is my opinion that no such determination could be made. In the first

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place traffic results for each of the four months are not necessarily comparable with each other. Therefore, a comparison of the results for any one of the months with any other month shown on the exhibit would not establish accurately such diversion, and secondly, the amount of traffic that might be diverted during a short initial period of operation would obviously be less than might be expected to be diverted if operations were continued over a period of years.

Some indication might be gathered by taking the entire [699] traffic of the industry and on a percentage basis determine the relative percentage of each of the carriers in the total volume before, during and after the period, when Mackay's circuit was in operation.

[719] Q. Mr. Cearley, for the purpose of this proceeding, have you prepared in exhibit form a rate history of the points served directly by RCA Communications and Mackay? A. Yes. That exhibit has been identified as Exhibit No. 190.

Q. Will you refer to this exhibit and indicate briefly what it shows? A. The exhibit shows in the left column all points served directly on February 1, 1948; and points formerly served directly by RCA Communications and Mackay.

The second column indicates the dates direct radio circuits of RCA Communications or Mackay, as the case may be, were opened, and shows certain direct circuits which have now been closed.

[721] Q. What does the exhibit indicate for the period shown, with respect to rate benefits from duplication of circuits; or the operation of split circuits, by RCA Communications and Mackay?

[723] A. This exhibit shows that the public has received the benefits of rate reductions without regard to the exist-

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ence or non-existence of competition among radiotelegraph carriers over direct circuits.

In short, one of the benefits which is usually considered to result from competition, namely cheaper prices to the public, has been received by the public, even though competition among radiotelegraph carriers in furnishing direct service was not present.

[724] The exhibit shows that no greater benefits in the form of reduction in price has been received by the public in instances where there is competition among radiotelegraph carriers with direct circuits than where there is not such competition.

[726] Q. Mr. Cearley, I would like to ask you some questions concerning your traffic agreements and other financial arrangements with foreign correspondent of RCA Communications in each of these three countries. It is true, is it not, that [727] in each of the three countries, Portugal, Surinam and The Netherlands, that Mackay, if granted authority to establish circuits would operate with the same foreign correspondents with which RCA Communications now operates? A. Yes. The effect of licensing Mackay, as I said a few minutes ago, as I understand it, would establish a split circuit operation.

Q. In general, would you say that traffic settlements and other financial arrangements by RCAC with its foreign correspondents in each of these three countries are made on the same basis? A. Yes, they are similar in that they are all on a fifty-fifty basis of division of a gold franc rate. However, for traffic terminating or originating in Holland and the United States the net gold franc balance due to either party is settled on a basis of 5.1825 gold francs equal one U. S. dollar, while in the case of Portugal and Surinam, such net gold franc balance is settled on a basis of 3.061 gold francs equal one U. S. dollar.

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[728] Q. It is true, is it not, that the collection rate charged to the public may be different from the rate used by the parties to settle traffic balances? A. Yes. The significance of this is that regardless of what adjustments may be made in the collection rate to the public as a result of action by the carrier or by the Federal Communications Commission, it still remains a question of settlement with the foreign correspondent.

Q. Over a period of years, are there many occasions to settle with foreign correspondents matters concerning rates, division of tolls and other matters related to circuit operation? A. Yes, and in so doing there are many things that could be done to favor one carrier as against the other.

[729] Q. Under such circumstances, what has, on occasions happened to American carriers? A. It is possible for the foreign correspondent to drive a bargain with one carrier at the expense of the other, or both American carriers, and ultimately to the detriment of the American Communications System and to the public.

In my opinion this point cannot be stressed too strongly in a split circuit case such as this case. Where the foreign administration controls the bulk of the outgoing international traffic from its country it can route the traffic at will. Where the Administration has a choice of two competing direct radio circuits, it is only natural to expect that it would favor the circuit from which it would derive the greater financial advantage.

Q. Would you say that to expect such a telegraph administration to play the competing carriers against each other is simply to expect that such Administration would be headed by good businessmen loyal to the national interests? A. Yes. Of course, under such circumstances the maximum concession which one American radio carrier makes to a foreign administration becomes the minimum which any other competitor can make to that Administration, if it expects to continue to receive a substantial proportion of the outgoing traffic from such country.

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Q. Has the position of RCA Communications been made [730] quite clear in past hearings starting with the Oslo case? A. Yes. We do not believe now, nor have we ever believed, that it is in the United States public interest to have two United States radiotelegraph carriers in communication with a single foreign administration in any foreign country so as to permit the playing off of one radiotelegraph carrier against the other to the detriment of the individual carrier and to the American communications system as a whole.

Q. Where a split circuit has been established, what position does the foreign correspondent or administration invariably take in dealing with the two American carriers? A. Experience has shown that the foreign correspondent takes the position that the two American companies are competitors with each other for traffic originating with that correspondent in the foreign country, and that it is not only within the capability of the telegraph administration of that country, but is also a national duty of the Telegraph Administration officials to obtain from either of the companies whatever they can of material advantage to their own country, either in making an original contract and operating under that contract, or in negotiating with either company for the renewal of that contract.

[731] Q. Will you continue your explanation of some of the disadvantages of split circuits from this viewpoint?

A. Since there are a number of ways in which a concession can be made, either of the two American carriers is at a serious disadvantage in negotiating with a foreign correspondent operating split circuits.

A carrier cannot advance a position consistent with [732] the interest of the American carrier and the United States public without running the risk that the second carrier will not go along.

Q. Without going into detail, would you indicate briefly some of the experiences of RCA Communications with split

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circuits? A. I might refer first to a situation that occurred with the Japanese Administration. For several years prior to the expiration of our contract and its renewal, and in 1935, a circuit was operated by RCA Communications with the Japanese Administration. A contract was entered into by that Administration with Mackay for the operation of a split circuit between Japan and the United States.

Subsequently it was found that the Mackay contract was more favorable financially to Japan than that of RCA Communications. The Japanese served notice upon RCA Communications that they desired to negotiate a new contract and insisted upon the same financial terms which they had received from Mackay.

Had it not been for the fact that the Mackay circuit had been established, RCA Communications could have resisted the efforts of the Japanese Administration. However, the establishment of the Mackay circuit with Japan under a more favorable basis to the Japanese placed the Japanese Administration in a dominant position of being able to dictate to [733] RCA the conditions under which the circuit should be operated, and placed control of the situation squarely in the hands of the Japanese Administration and resulted in a loss of considerable revenue to the American carriers.

Q. Has a somewhat similar situation occurred with [734] respect to Egypt in recent years? A. Beginning in 1940 RCA Communications opened a direct circuit between New York and Cairo, Egypt. No formal traffic agreement was executed but under an informal operating arrangement the tolls were divided on a fifty-fifty basis. This division of tolls was suggested by the Egyptian Company.

In 1942 Mackay instituted negotiations for the opening of a split circuit. Before such arrangements were completed RCA Communications was approached by the Egyp-

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tian Company with a proposal to change from a fifty-fifty division of tolls to a two-thirds/one-third division.

This RCA Communications declined to do. The situation was at that time uncomplicated by the existence of a split circuit and the Egyptian Company was unable to bring any pressure to bear to enforce its proposal. The fifty-fifty division of tolls was therefore maintained.

Mr. Gibbons: May I interrupt?

What did you mean by the two-thirds/one-third division?

The Witness: That was on traffic originating with the Egyptian Administration or company. They demanded two-thirds of the international tolls, giving to the receiving company one-third.

Mr. Gibbons: And what would the receiving company or the American company obtain from traffic in the other direction?

[735] The Witness: They could retain two-thirds of the outbound traffic and give to the receiving administration one-third.

Mr. Gibbons: So what you mean by the two-thirds/one-third division is that two-thirds of the toll would be held by the sending station and one-third would go to the receiving station.

The Witness: That is correct.

Mr. Gibbons: In both directions?

The Witness: That is right.

By Mr. Hawkins:

Q. Will you continue with your explanation? A. Early in 1943 however after the Mackay split circuit had been in operation for several months RCA Communications was again approached by the Egyptian Company with a proposal to substitute a two-thirds/one-third division of tolls for the fifty-fifty arrangement which had been in effect since the opening of the RCA circuit in 1940.

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The Egyptian company was informed that its request had been submitted to our government and that a reply would be made as soon as a decision could be obtained. A few days later, the Egyptian company informed RCA Communications to the effect that in the absence of a definite reply to its proposal the RCA circuit from Cairo would be less favorable to the Egyptian company financially than the Mackay route for which a two-thirds/one-third division had [736] been agreed upon.

As a consequence, RCA Communications was then faced with a potential loss of traffic which the Egyptian Company diplomatically but pointedly intimated would be diverted from the RCA circuit to the Mackay circuit because of the more favorable division of tolls on the Mackay circuit.

Prior to the opening of the Mackay circuit, RCA Communications could bargain with the Egyptian Company on an equal basis. However, with the opening of the Mackay split circuit this bargaining power disappeared and RCA Communications was forced into the position of making a concession at a loss to it and the American communications system.

Q. Mr. Cearley, can you cite one further example where a dispute lasted over a period of years? A. Yes. I think the difficulties that have been encountered in negotiating with Cable and Wireless Limited is a good example of what can occur when split circuits are established.

In 1943 Mackay was authorized to establish a split circuit between New York and London. The circuit of RCA Communications had been in operation since 1920. Beginning in 1937 an amendment to our traffic agreement with C&W was negotiated. This amendment provided that in the settlement of the gold franc balances the debtor would pay in the currency of the creditor country. This practice had been followed beginning [737] in 1937. Mackay, however, began to settle with C&W on the basis of the debtor paying in the currency of its country.

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Due to the ratio of dollars and pounds sterling settlement on this basis would be a substantial benefit to C&W.

Q. Was this matter called to the attention of the Federal Communications Commission? A. Yes. The matter was referred to the Commission. After an investigation of the matter by the FCC Mackay and RCA were instructed to negotiate with a common point of view.

Q. What was the final outcome of this dispute? A. The dispute was settled during the year 1947 by a concession being granted to C&W insofar as settlements for the year 1946 were concerned. A new basis of contract was agreed upon for future periods beginning with January 1, 1947. The American carriers lost considerable revenue in the settlement of the dispute. This situation indicates what may happen to one or both carriers where they work a split circuit with a foreign administration.

Q. The Commission could exercise control over negotiations and settlements in other similar situations as it has exercised in the C&W matter, could it not? A. Yes, it could.

Q. What is your opinion as to whether or not such control would be completely effective? [738] A. The Commission could require that all traffic contracts entered into by any carrier with a foreign terminal be immediately made public and available to all carriers. This would improve the situation somewhat. However, it would not completely obviate the difficulties for the reason that many negotiations are carried on with a foreign correspondent from time to time in adjustment of rates and tariff matters.

In addition, there is always the opportunity for the foreign carrier to route the traffic either originating or transmitting as it chooses. There are many other situations that arise in the day to day operation of an international radio circuit which provide opportunity for the playing off of one carrier against another.

Mr. Werner: What kind of situations do you have in mind? You say there are many other situations?

Lón A. Cearley, for Appellant—Direct.

The Witness: Well, many other questions that may arise, having to do with any kind of a contract: for the division of tolls or handling of traffic or anything else. They always have, in dealing with two carriers, the opportunity to go to the other one for a better proposition.

You could have any number of situations that could develop:

Mr. Werner: If I am not mistaken, Mr. Hawkins, your question was: if the Federal Communications Commission in any authorization it might give with respect to a split circuit [739] provide that one carrier shall not give any terms better than the other carrier, whether that would be effective, wasn't that the sense of your question?

Mr. Hawkins: I thought that that question was necessary to make the presentation complete. That was the idea of the question. The witness was endeavoring to give his views on that point. There are one or two further questions and perhaps if he would answer those it might clear up your inquiry.

Mr. Werner: All right.

By Mr. Hawkins:

*Q. Assuming that by regulation such difficulties as these could be reduced, are there certain other inherent difficulties that would be inevitable? A. Yes. Such control over the day to day and year to year conduction of affairs by the carriers would materially increase the administrative burden and difficulties not only of the Commission but of the individual carriers as well.

In many respects it would hamper negotiations. Neither of the American carriers could proceed or take a firm stand on a point without giving attention to the requirements of clearing the matter with the Commission and the other American carriers, resulting in an endless administrative burden without any corresponding benefit to the public.

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[740] Regardless of what common point of view may ultimately be established, and the care taken in dealing with a foreign administration operating a split circuit, the mere fact that a split circuit exists creates a situation for opportunity to play one American carrier off against the other to the detriment of the carrier and the American public.

Mr. Werner: I am not clear on your testimony there. I wonder if I could just get clear in my mind. I think you said first there were objections to split circuits because of the ability of the foreign administration to play off one American carrier against the other, and you said that if the Commission were to, by some proper provision, order the carriers not to give a foreign administration a better break than the competing carrier, that that would not be effective completely, is that the sense of your testimony?

The Witness: I think I can clarify my thinking—at least what I am trying to put on the record here. That is, where you have one foreign administration dealing with two carriers, regardless of your contractual relations, anything that may come up wherein the foreign administration may feel that they get an advantage from one carrier, they then can take advantage of that.

Mr. Gibbons: Can you identify any such thing?

The Witness: Recently, in the discussion of our division of tolls with Cable and Wireless, I think is a good illustration at point. One carrier cannot take the position:

"No, I will not divide the increased rates with C&W", for the simple reason that the other carrier has the opportunity, if it were so inclined, to say: "Well, if that were left to me I would make the division."

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So there you have a favorable situation for one to the detriment of another which is difficult to control.

Mr. Gibbons: In that London situation did not the Commission order the carriers not separately to take a position without agreement among them?

The Witness: That is correct. In the case of C&W they did. I simply used that as an illustration of what could happen on any other circuit.

Mr. Werner: I would like to finish my question for the purpose of clarifying the answers if I wanted any cross examination on the point.

Now, you also testified in your answer to Mr. Hawkins' question with respect to any condition which the Commission might put in authorizations regarding split circuits—at least the sense of your answer was that that was objectionable because that would then preclude one American carrier from negotiating with the foreign correspondent, is that true?

The Witness: No. I am simply pointing out that it would be cumbersome. That could be done. The Commission [742] could require every transaction to be submitted to it, but I simply point out that that would be cumbersome over a period of time.

Mr. Werner: All right.

Mr. Hawkins: I would like to ask a couple of questions on that.

By Mr. Hawkins:

Q. Isn't it true that not everything in your day to day dealings with a foreign correspondent is covered by the contract and tariff matters? A. That is true. There are numerous situations that could bring about a dispute.

Q. And, of course, that applies as to routing of traffic and one thing and another also? A. Sure.

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[744] Q. Have you made a study to determine the effect upon the net operating results of RCA Communications if Mackay is authorized to establish split circuits with The Netherlands, Surinam, and Portugal. A. Yes. The results of the study are shown in Exhibit 191.

Q. Your study, as shown in Exhibit 191, was based on data for what period? A. Based on data for the first six months of 1947 and the amounts shown on this statement are for the first six-month period only.

Q. Why did you take the first six months of 1947 to study? A. This period covered the agreed upon time for such a study to be made in the General circuits case and in preparing for that case we developed data that could be used here.

Q. Will you refer to the exhibit and explain how you arrived at the computations shown? A. Column "A" of the exhibit indicates the circuits for which the related figures apply. Column "B" shows the number of equated paid words handled over each of the circuits, including transiting traffic during the six-month period shown separately outbound and inbound [745] words and separately for the three circuits. To arrive at the total equated words shown on the exhibit separate computation was made of wordage traffic terminating in either the United States or Portugal, and in addition separately for each country served via any of the three circuits.

Column "C" of the exhibit indicates the revenue to RCA at rates effective April 28, 1948 in accordance with the recent decision of the Commission in Docket No. 8230. The dollar amounts shown in column C were determined by taking the number of equated words in column B and applying the net retention to RCA under rates and division of tolls now in effect.

In this computation the net to RCA was based on its retention of the gross international tolls for traffic originated or terminated by RCA. This was done for each of the circuits, although I recognize that this revenue is in fact

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decreased by the land line proportions to Western Union where the traffic is either received from Western Union or turned over to Western Union for delivery.

Q. Will you continue your explanation with respect to Column "D" of the Exhibit? A. Column "D" of the exhibit sets forth the cost to RCA of operating its circuits to each of the three points as indicated on the exhibit.

[746] Q. Will you explain in detail the manner in which you arrived at the cost figures as indicated? A. In August 1947, at a prehearing conference in the General circuits case, Docket No. 7974, a discussion was held concerning the allocation of costs to circuits. Subsequently at the suggestion of the Commission's staff, a meeting was held at the Commission's New York accounting office. At this meeting the carriers were represented. Subsequently, as a result of this conference and discussions thereafter, a letter was written by the Commission dated September 15, 1947 to each of the carriers setting forth the manner in which costs shall be allocated to circuits.

[752] Q. Mr. Cearley, for the record will you indicate whether or not any adjustments have been made in the actual recorded operating costs for the first six months of 1947 which were used in the allocations made to The Netherlands, Surinam, and Portugal circuits? A. Yes. An adjustment was made to the actual operating expenses for the first three months of 1947 of the amount of wage increases taking effect as of April 1, 1947. Also there was included the effect of a wage increase that became effective November 1, 1947.

Q. Will you explain why it was necessary to make these adjustments? A. It was necessary to make these adjustments in order to present accurately the cost of operation of the circuit for a six-month period. It will be recalled that to make these adjustments is consistent with the adjustment I have made in Column "C", where I included revenue that would accrue to RCA Communications had the rates

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been [753] at the level to which they have now been established by the Commission's order of April 22, 1948. This is consistent with the methods followed in the determination of a representative period of operation presented in Docket 8230.

Q. Will you state why it was necessary to use a six-month period in this study rather than a full year? A. It was necessary to make the study based upon the period indicated because that was the period selected for the cost allocation study pursuant to the formula in the General circuits case that I have just discussed. It took approximately three months to make this allocation study and obviously time did not permit a similar study for the last half of 1947.

Q. Referring again to the exhibit, what does Column "E" show?

Mr. Werner: Before you go to Column "E", I would like to ask a question on Column "D".

Are operating expenses included in the allocations shown in Column "D"?

The Witness: Yes.

Mr. Werner: They are?

The Witness: Yes.

Mr. Werner: Are all expenses included?

The Witness: All expenses are included, including an allocation of overhead.

[754] Mr. Werner: Thank you.

Q. Mr. Gibbons: On what basis, Mr. Cearley, were the allocation of overhead and operating expenses made?

The Witness: In accordance with the formula agreed upon.

Mr. Gibbons: Exhibit 193, the September 15th letter?

The Witness: The three letters.

Lon A. Cearley, for Appellant—Direct.

By Mr. Hawkins:

Q. What does Column "E" show? A. Column "E" reflects the gain or loss that would accrue to RCA Communications from operating single circuits to the points under discussion. The amounts are arrived at by subtraction of the figure in Column "D" from those in Column "C".

Q. Will you continue with respect to Column "F"? A. Column "F" shows the estimated percentage of revenue that would be diverted to Mackay Radio if Mackay were granted license to operate split circuits to the points. This percentage was determined, based upon the percentage participation of Mackay in word traffic to and from all foreign countries where split circuits are operated.

Q. Where are those computations shown? A. The computations are detailed on Exhibit 192. They were based upon the number of paid words outbound and inbound traffic as reported to the Commission under [755] Order 85 for the first six months of 1947.

Mr. Wendt: Column "F", Mr. Cearley, with respect to the percentage figures shown there, are those percentages of the total traffic to and from The Netherlands—that is, estimated that Mackay will handle—are those percentage figures percentages of traffic which RCA alone will lose?

Mr. Hawkins: I am sure that this is a proper question, Mr. Commissioner, and I don't want to cut him off. But I think if the witness continues this will all clear up.

Mr. Wendt: Fine. I will wait.

By Mr. Hawkins:

Q. Returning again to Exhibit No. 191, will you continue your explanation with reference to Columns "G" and "H"? A. Column "G" is the estimated loss of revenue by RCA if Mackay operates direct circuits with these three

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countries. In this computation I have given full effect to the traffic volume of Mackay for the period covered by this study, handled over its present routes with each of the three countries.

Q. Will you explain precisely how you have made this computation? A. I took the actual wordage volume of Mackay and equated those words to arrive at the comparable number of [756] equated paid words. This was necessary because, as I have stated with respect to Column "B" of the exhibit, the RCA wordage volume was also equated in order to give full effect to the new rates. I then took the total equated words as shown in Column "B" and added the equated words of Mackay, the total being the expected wordage volume of the circuit to be handled by Mackay and RCA.

This number of words I would call the total expected radio word load of the circuit. Having thus arrived at the expected word load of the radio circuits I applied the percentages as shown in Column "F" to arrive at the expected load of Mackay over the direct circuit.

Since Mackay now handles a certain wordage volume over its present routes, the difference between this volume and the expected load of Mackay represents the estimated traffic load to be diverted to the Mackay direct circuit. The estimated revenue attaching to this traffic was taken from the revenue of RCA shown in Column "G" and the remainder of the amount left after this adjustment has been made is shown in Column "H".

Mr. Wendt: Then you do assume that all the traffic that Mackay will gain will come from RCAC?

The Witness: That is right.

Mr. Kennedy: What was the basis for that?

The Witness: I presume that in the field now there was [757] active competition between radio and cable and I presume that traffic that could be taken from cables was already taken from cables

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by radio; and on that basis I presume that RCA Communications would lose.

Mr. Kennedy: So you presume from that exhibit that what traffic Mackay gets will be taken from RCA. Is that correct?

The Witness: From the radio carriers, yes.

Mr. Gibbons: I am not clear on this, Mr. Cearley. Take Surinam here on Exhibit 191 and relate that to Exhibit 192. Now, as I understand it, in Exhibit 192, showing the traffic which both radio companies handled to and from these countries, it appears that Mackay handles inbound from these countries, 37.6 percent of the total on Exhibit 192. Is that right?

The Witness: That is right.

Mr. Gibbons: Then you assume here with respect to inbound traffic from Surinam that Mackay will handle 37.6 of the inbound traffic from Surinam which now—

The Witness: Of the total radio traffic inbound, if they were operating a direct circuit.

Mr. Gibbons: In other words, on the basis of this analysis shown on 192, you have carried it over here into Column "F" of 191.

The Witness: That is correct.

[758] Mr. Gibbons: And you have applied that theory here even though as you are aware the record shows that Mackay will handle inbound from Surinam only such traffic as is specifically routed.

[759] By Mr. Hawkins:

Q. You did not intend by this exhibit to show what the loss would be to the other carriers such as Western Union or Commercial. This is merely intended to be what the loss to RCA would be. A. This is intended to reflect the estimate of the loss to RCA.

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Mr. Werner: Didn't you say, Mr. Cearley, that, on the basis of this exhibit, there would be no loss to any other carrier other than RCA?

The Witness: I did not presume any loss.

Mr. Werner: That is what I mean.

The Witness: That is correct.

Mr. Werner: You assume no loss to Western Union and Commercial Cable, and you assumed that what loss would [760] occur would be from RCA?

The Witness: That is correct.

Mr. Gibbons: That assumption being invoked even though traffic which Mackay might get might conceivably come from some other carrier.

The Witness: I don't believe I understand your question.

Q. Just a couple more questions, Mr. Cearley. You don't intend by this exhibit to show what the loss would be to Western Union? This is intended merely to show the diversion from RCA of the radio volume. A. That is correct. That is what I estimate would be the loss to RCA Communications.

[761] Mr. Wendt: There may be additional losses to Western Union and Commercial.

The Witness: Could be.

By Mr. Hawkins:

Q. Will you indicate separately for each of the three countries the estimated effect on circuit net operating results? A. For The Netherlands the effect would be to entirely eliminate a present gain of approximately \$49,700 and leave a loss from circuit operations of approximately \$10,000.

For Portugal, the effect would be to cause a gain from the circuit of approximately \$25,000 to become a loss of approximately \$14,000.

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With respect to Surinam, the loss from circuit operations would be increased from \$2,500. to approximately \$5,300. The over-all effect for the three circuits would be to create a loss of approximately \$29,000 from these circuit operations. Compared to a gain at the new rates of approximately \$72,000.

Q. What period of time does this computation cover?

A. The expected operating results that I have related are for an operating period of six months under present conditions.

[762] Q. What would be the effect on an annual basis?

A. On an annual basis, multiplying the above amounts by 2, would show a loss to RCA of approximately \$203,000 as compared to present conditions.

Q. How would this affect circuit operations from the profit and loss standpoint? A. On an annual basis it would be a loss of \$58,600 from operations of the three circuits.

Q. With respect to footnote 3, with whom did you confer in arriving at this conclusion? A. I conferred with the vice president in charge of engineering, and with individuals in the operations department whose responsibility it is to determine equipment and personnel necessary for each circuit operation.

Q. Mr. Cearley, you stated that you used in your study, with respect to each of the three circuits, the retained revenue per full rate word to RCA Communications for traffic originating or terminating in a gateway city. Will you state how using such a rate per word affects the revenue in Column "C"? A. It tends to overstate the revenue in Column "C" for the individual circuits.

Q. Have you made an attempt to determine the extent to which the amounts shown in Column "C" and "E" may be affected? [763] A. Yes.

Q. Will you explain how you did this and give the amount with respect to each circuit? A. For use in the General Circuits case, Docket No. 7974, the Commission requested that the carriers make certain studies of traffic

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for the month of June 1947. This study would show the percentage of total traffic handled to each of these three countries, transferred to RCA Communications by Western Union. The response made to the Commission in this connection shows that 17.9 percent of the traffic handled outbound to Holland by RCA originated with Western Union, that 31 percent of the traffic handled to Portugal by RCA originated with Western Union, and that 16.3 percent of the traffic handled to Surinam by RCA originated with Western Union.

For the purpose of approximating the effect upon the revenue of RCA for both outbound and inbound traffic received from or transferred to Western Union it was assumed that the same percentage applicable to outbound traffic would be applicable to inbound traffic since the results of no special study for inbound traffic were available.

These percentages were applied to the equated words stated in Column "B" of the exhibit to approximate the number of equated words which would have originated with or transferred to Western Union.

[764] To the total of equated words computed separately for each circuit there was applied the full rate per word land line toll of 4 cents. The result of our determinations shows that approximately \$8,562 would be the pay-outs to or retention by Western Union for traffic destined to or received from The Netherlands.

\$9,670 for traffic destined to or received from Portugal; \$427 for traffic destined to or received from Surinam, or a total of \$18,659 for the three circuits combined.

Assuming then that the estimated volume of traffic to be lost to Mackay would have the same ratio of traffic handled by Western Union land lines, a division of the amount of pay-outs to or retention by Western Union was allocated to the loss of revenue estimated to be diverted to Mackay from each circuit. The result was, of the \$8,562, estimated to be paid to or retained by Western Union land lines from The Netherlands circuit, \$3,189 should be applied

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to Column "G" and the remaining portion, or \$5,373 should be applied to Column "H".

Of the \$9,670 applicable to the Portugal circuit, \$3,328 should be applied to Column "G." and \$6,342 to Column "H". Of the \$427 applicable to the Surinam circuit, \$149 should be applied to Column "G" and \$278 to Column "H".

Giving effect to the adjustments described the total [765] of Column "C" would be reduced by a total for the three circuits of \$18,659, leaving a total of \$153,651.

Column "G" would be reduced by a total for the three circuits—

Mr. Werner: You mean 253, don't you?

Mr. Hawkins: It should be 253.

The Witness: 253. I beg your pardon.

(Continuing): Column "G" would be reduced by a total for the three circuits of \$6,666 leaving a total of \$94,794.

Column "H" will be changed by a total for the three circuits of \$11,993, leaving an adjusted loss of \$41,407.

By Mr. Hawkins:

Q. After applying these adjustments to amounts indicated in Exhibit 191, what would be the annual results from operation of the three circuits as split circuits? A. On an annual basis, determined by multiplying by 2, the adjusted results of operations for the three circuits would be a loss of revenue as compared to present conditions of \$189,588.

The net result of operating the circuits as forked circuits would be a net estimated loss of \$82,814.

Q. Mr. Cearley, have you carried this one step further to show what necessary adjustments must be made in the rates between the United States and each of the three countries to make up this loss? You might state first the [766] present rate and the required rate. A. I have estimated the rate increase that would be necessary to over-

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come the revenue loss from this estimated diversion to the direct circuit operations. Those rates are as follows:

The present rate to Portugal is 30 cents. I estimate it would require a 40-cent rate.

Mr. Kennedy: Do you still refer to RCA only?

The Witness: That is correct.

Mr. Kennedy: You are not speaking of how the other carriers would be able to handle this traffic or at what rates. Is that correct? I just want to understand the basis.

The Witness: This is based on the loss in revenue because of the diversion.

Mr. Kennedy: To RCA?

The Witness: To RCA.

The Netherlands, present rate 30 cents; I estimate would require a 43-cent rate.

Q. You don't mean by that statement that RCA would request this rate, but that is what it would cost the public. Is that not true? A. That is my estimate of the rate that would be [767] required to overcome the loss of revenue, because of the diversion.

Q. Mr. Cearley, you have explained, by this exhibit, the financial effect on RCA Communications if Mackay is permitted to establish circuits with The Netherlands, Portugal, and Surinam. There are many other countries in the world where duplication of facilities could be authorized, are there not? A. Yes, there are.

Q. Based on the results of your study with respect to these three countries, what may be expected if further duplication is permitted? A. The results of this study indicate what might be expected if Mackay were to duplicate circuits to all places now served by RCA at which Mackay does not at present have circuits, the results would be indeed far-reaching.

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Q. What in your judgment would be the effect on independent radio communications and RCA Communications if Mackay continues its plan for duplication of circuits?

[768] Q. Mr. Cearley, what in your judgment will be the effect on independent radio communications and RCA Communications if Mackay continues its plan for duplication of circuits?

Mr. Werner: For my own benefit, so that I can understand the answer, I would like to know what Mr. Hawkins means by "independent"?

Mr. Hawkins: I am not a witness, but I will define [769] the term.

Mr. Werner: I mean define your question so I can understand the answer.

Mr. Hawkins: "Independent" refers to any company or combination of companies including only radio, and it means disassociated with cables.

Mr. Werner: I see. All right.

The Witness: The picture for the communications industry and RCA, in my opinion, the results would be disastrous. If duplicate circuits are authorized to Mackay to all the places in Europe now served directly by RCA and in addition it continues to expand elsewhere throughout the world, it is not difficult to visualize within a reasonably short time that a very substantial portion of the business now handled by RCA Communications will be diverted to those circuits with the resulting adverse effect to the public interest.

Mr. Kennedy: Mr. Commissioner, I think I will have to object to this public interest at the conclusion of his answer there. That certainly is a far-fetched

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conclusion and I don't think this witness can answer in that way.

[770] Mr. Hawkins: Mr. Commissioner, I think the witness is an expert witness. He is familiar with financial matters within the industry, and I believe that he is qualified to make that statement.

Mr. Kennedy: If that is just an opinion of his I am willing to withdraw the objection.

The Presiding Officer: Proceed. Objection withdrawn.

By Mr. Hawkins:

Q. If that should happen what would be the result on RCA Communications? A. Based upon my experience as Controller, particularly the last two years, when RCA Communications along with the industry went through two rate proceedings in this Commission it is my considered judgment that steps would have to be taken to curtail and reduce the activities of RCA Communications substantially. If expenses should exceed revenue many of our smaller circuits serving important sections of the world, which we have opened and which are important to the countries they serve, although at this time not heavily occupied with traffic, might have to be closed.

We should have to make further economies wherever possible. No doubt we would have to reduce or eliminate some of our projects and activities which have so materially contributed to the development of radio communication.

[771] What the ultimate outcome might be I do not know but there is not sufficient business in the world at the present time to be carved up into small pieces and enable profitable operations by several carriers, further diluting the already inadequate revenue.

Q. Will you carry that one step further to show how the public interest may be affected?

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[772] A. The effect on world-wide communications and in the final analysis the effect on the public generally, is the ultimate question. If in any case we have further duplication of facilities performing the same service that individual facilities can now render, one of two things must necessarily happen: either the public will be forced to pay a much higher price for the service that it receives, or one or both companies will be forced to contract its operations to the extent that the United States could not have a strong world-wide communications system which it must have.

[773] Mr. Werner: In connection with the same exhibit, Mr. Commissioner, I would like to ask some questions. In arriving at your loss of \$10,034 in column H of Exhibit 191, did you go back to your column D, "Cost of Operating Circuit" and show the reduction in cost which would be [774] attributable to the diversion of traffic to Mackay? As I understand it you arrived at the allocation figure in column D on the basis of transmitter hours and all costs involved in the operation. Now, if there were a reduction in the number of words handled by RCAC, on the basis of the formula that you used, would that not result in a smaller figure in column D for The Netherlands, and a smaller figure for Portugal and Surinam than is now indicated?

The Witness: If that method were followed, that is true, but if you will notice, in footnote 3 I say that if Mackay is granted split circuits the cost of operating the circuits of RCA is expected to remain as indicated.

Mr. Werner: Yes, but as I understand this exhibit, especially column D, that is an allocation and not an actual cost.

The Witness: That is correct. It was allocated on the basis set out in the letters.

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Mr. Werner: So wouldn't it follow that when your traffic factors change that, using the same formula, you would come up with a different allocation?

I recognize that if these were actual costs, that may be one thing, but using a specific allocation formula, when the factors change the result of the formula would also change, would it not?

[775] The Witness: If you followed through on that reasoning, it would. I would be glad to make the computation on that. However, I have not considered that there would be that reduction.

Mr. Werner: Let me put it this way, Mr. Cearley: Let's assume that you began your allocation study with a reduction in the word volume which you anticipate will occur if Mackay's applications are granted. If you began with that figure—that traffic figure—your figures in column D would all be different, would they not?

The Witness: To whatever extent the word allocation affected it, it would.

Mr. Werner: That is what I mean.

The Witness: But a substantial portion of the expenses are on other basis of allocation. To that extent it would not change it.

Mr. Werner: I realize that. For example, your transmitter, if it is on 24 hours a day, the cost of operating that transmitter would be the same regardless of the amount of traffic handled over that transmitter.

The Witness: That is correct.

Mr. Werner: On the other hand there may be a reduction in costs for operator hours, messenger pick-up and delivery service, and such items of cost which were included in this allocation formula as I understand it. Do I make myself clear?

*Harry Baach, for Western Union
Telegraph Company—Direct.*

[776] The Witness: Yes. I understand it. I will be glad to show you the result of that.

[777] Mr. Werner: One other question, Mr. Commissioner, with respect to Exhibit 192. All the circuits to the countries shown in that exhibit I understand are split [778] or forked circuits. Is that correct?

The Witness: That is in accordance with my interpretation of what is a split circuit.

Mr. Werner: On those eleven circuits shown on that exhibit, have you made an allocation study similar to the one made in Exhibit 191?

The Witness: I have not.

Mr. Werner: Are you prepared to state that all the circuits shown on that exhibit are circuits on which RCA Communications sustains losses in operation?

The Witness: I have not made any allocation—

Mr. Werner: I am not saying you made that statement. I am asking you if you are prepared to make that statement.

The Witness: I am not saying that we are having a loss on those circuits. I don't know.

[791] Whereupon HARRY BAACH was called as a witness for and on behalf of Western Union Telegraph Company and, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Wendt:

Q. By whom are you employed? A. I am employed by the Western Union Telegraph Company.

*Harry Baach, for Western Union-
Telegraph Company—Direct.*

[792] The Presiding Officer: Without objection, Mr. Baach's qualifications will be accepted.

[800] By Mr. Wendt:

Q. Now, Mr. Baach, when the message gets to Holland,—to Amsterdam—what terminal facilities are available to the Western Union for the delivery of such traffic? A. At Amsterdam, we pick up traffic from the centers by telex, which has been properly described as the European equivalent of the ATT-TWX in the United States. We have tie-line connections. We have the facility of telephone pick up and delivery, and we have messenger pick up and delivery. That is, for Amsterdam.

Q. Excuse me, at that point. We have our own office in Amsterdam? A. Yes, sir; we have our own office.

[801] Q. And the tie lines to important customers terminate right in the Western Union office in Amsterdam? A. Yes, sir. All of the messages that will be handled or can be handled through the facilities which I have just described, for pick up and delivery in Amsterdam terminate in our own office, and the messengers I referred to are our messengers picking up and delivering through that office.

Q. They are Western Union employees? A. That is correct.

Q. Do we have any call boxes? A. No, we do not. We haven't had any need for them so far.

Q. Now, beyond Amsterdam, traffic destined to points in The Netherlands other than Amsterdam, how is such traffic handled? A. At all other points in The Netherlands, the Dutch Administration offices accept messages bearing our routing, and transfer them to our office in Amsterdam, whence all Western Union traffic is then transmitted directly to New York via London.

Incoming messages arriving at our Amsterdam office for points in the hinterland of The Netherlands beyond our

*Harry Bauch, for Western Union
Telegraph Company—Direct.*

Amsterdam gateway are likewise delivered through transfer to the Dutch Administration in Amsterdam.

[802] Q. In the event that Mackay should be licensed to communicate with Amsterdam, would the terminal facilities available to it be any different from those available to the Western Union Telegraph Company outside of Amsterdam? A. To the best of my knowledge they would be identical. The same people would pick up and deliver the traffic outside of Amsterdam.

Q. In Amsterdam, however, there would be a difference? A. That is true. I do not believe they will have their own messenger pick-up, their own tie-lines, direct telex connections, or their own telephone switchboard. They would have to depend entirely upon the Dutch Administration in Amsterdam for the performance of equivalent service.

Q. Do you have any other comments you care to make with respect to our operations in The Netherlands? A. From a service standpoint?

Q. Yes. A. Nothing other than our ability to hold the business indicates to me we are performing an unusually excellent service against most difficult odds, and I am not aware that the public has complained about our service and the quality of our service in Amsterdam from The Netherlands to the United States, from the United States to [803] Amsterdam, or from the United States to any point in The Netherlands.

Mr. Werner: What did you mean by your phrase "against odds"?

The Witness: Well, I can deal with that at greater length if you wish.

Mr. McPherson has recited some of the difficulties experienced by the Commercial. I don't look upon those difficulties with the same apprehension. Any man in the telegraph business knows he must slug for business. We are willing to slug for it, and we

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Telegraph Company—Direct.*

have held our own against those same difficulties, and we are quite willing to continue slugging for it.

By Mr. Wendt:

Q. But there is also the difficulty of competing with a nationally-owned and operated radio company in a foreign country for inbound business, isn't there? Isn't that the difficulty? A. There is, when you find yourself competing with such a national enterprise under the conditions that currently prevail.

[806] Q. Now, how is Western Union traffic handled in Portugal once it arrives there? A. By the same administration that will pick up and deliver for all of the carriers participating in this case, the Portuguese Administration.

The same facilities of pick up and delivery will be employed by all of us through that administration, and we now employ those facilities.

Q. Were you present when Mr. McPherson testified with respect to the effect of the 1941 decree of the Portuguese Government? A. I was.

Q. How do you reconcile his testimony with the rise in traffic from Portugal which Western Union experienced in 1942, which was after the decree of 1941, as shown on Exhibit No. 16? A. Well, I think you ought to go back to 1940 to obtain a thorough appreciation of the problem. If you will look at Exhibit 16, which I now have before me, you will see the rather meteoric rise which Western Union enjoyed, going from 1940 to 1941, even while RCA was there, and in [807] the year when that decree was issued—and I believe the exhibit introduced through Mr. McPherson indicated that the Portuguese decree was published in the latter part of 1941—even in that year we rose to our highest levels, and even after it was in full effect in 1942, we enjoyed those very high levels, until late in 1942, when

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Telegraph Company—Direct.*

competitive mayhem was committed against Western Union by the Commercial.

[814] Q. Mr. Baach, during the course of Mr. Mitchell's testimony, and again today, in the form of an exhibit, proof was offered to show that there have been no rate reductions until the radiotelegraph carriers entered the field of international communications. Do you agree with that general statement? A. No, sir. I can understand why it was made, but I can't agree with it.

Q. What is the fact? A. Well, I have high regard for Mr. Mitchell, and [815] I appreciate his well-informed viewpoint, but, having lived through the rate-cutting wars of cables versus radio, and knowing that any new businessman in a new business chops rates in order that he can get started into business, I can well accept that with a grain of salt, but the statement that implied that there had been no cable cuts overlooked what, in my opinion, was the greatest cut in rates ever, and it was not a competitive rate cut either: it was the business-building type of rate cut.

It was when the cables, and only the cables, first introduced the night letter service and the deferred service.

That was a rate reduction of the greatest moment. It produced business, it created a new market, it created new volume, and the proof of it today is in the very figures that we are familiar with, when about 80 percent of the load is in those two classifications.

Mr. Werner: When did that take place?

The Witness: About 1912. Between 1910 and 1912.

By Mr. Wendt:

Q. And that rate cut far antedated the entrance of any radiotelegraph company into business? A. Oh, yes. I might

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Telegraph Company—Direct.*

add, also, that there were many cable cuts before radio was born, all produced out of the same reasoning: One cable company was there, a new [816] cable company came in, and it sliced a rate in order to get going. So it wasn't radio: it was just competitive action.

Q. Now, Mr. Baach, is it sufficient to say that when an additional radio carrier is permitted to do business at a new point, that the net proceeds to the American carriers—what might be termed the “pie”—is thereafter simply divided four ways, when theretofore it had been divided three ways? A. Well, it may be true that the pie is divided by four, but the big thing is we no longer have the same pie. It is much smaller, because, to accomplish that further division of the pie, a piece of the pie must first be donated to a foreign administration.

Q. What do you mean by that? Can you give us an example of that? A. Well, I will give you a bit of an illustration, and as an example, I will deal with Commercial Cable Company and Mackay Radio, and let's take The Netherlands. Let's say, for the moment, that Commercial Cable Company enjoys \$100,000 of revenue on traffic from The Netherlands to the United States. Its associate Mackay Radio enters the field. Commercial Cable Company, let us say, loses 50 percent of its load to its companion competitor, and theoretically no harm has been done, so we hear: it goes [817] from one pocket into the other, so the story goes. Commercial Cable's \$100,000 goes down to \$50,000, but don't think for one moment that the other \$50,000 goes to Mackay Radio.

That cut of the pie has to come into the picture. Mackay Radio has to whack up with the Holland Administration, in order to be there in the first instance, that \$50,000 which it has taken away from the Commercial Cable Company, and, roughly, that division is 50 percent, so that the AC&R system, in that instance, having started with \$100,000, for

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Telegraph Company—Direct.*

example, and the Commercial Cable Company ends up with Commercial Cable Company and Mackay Radio and \$75,000, and the Dutch have been handed \$25,000.

Q. Do you recall, during the hearings in Docket 8230, that it had been strongly urged by the AC&R Companies, as well as the other companies, that the revenue requirements of the American carriers as a whole be the decisive factor in determining upon the new rates; do you recall that? A. I very well remember that.

Q. How can you reconcile that principle of rate-making, so to speak, with this practice of diluting the revenues of the American carriers by handing over additional money to the foreigners? A. I think it is quite obvious that a continuation [818] of that practice will bring us all to the same one end: revenues will be diluted from the American side, our tills will be depleted, we will all be in difficulties, and we will be down here for rate money from the American public in order that it can be parcelled out to the foreign administrations, so that the foreign administrations can continue with this so-called radio nationalism.

Q. Then, is it your position that the only justification for the entrance of another carrier into an already crowded field—a field with an abundance of facilities—is when it is shown that the entrance of such carrier will produce enough new business to offset the losses necessarily incurred by the other carriers already there? A. That is right, and that new business isn't here. The record shows where business is moving, where it has been moving, the testimony in Docket 8230 proved it, and all this accomplishes is that we go to the Dutch and build up the bugaboo of radio nationalism, which, truthfully, is only dollarism, and we say to the Dutch, "You do business with us on this basis and we will pay you for it at the expense of the United States."

Q. On that point of radio nationalism, about which Mr. McPherson testified at length, is it your opinion that there

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Telegraph Company—Direct.*

is any real such national preference for radio, or is it the natural preference that goes with the [819] desire for additional money? A. The good American dollar is the only answer.

Q. Have we had experiences along those lines? A. We most certainly have.

Q. Can you give us one? A. Yes. Right recently, Germany.

Q. What happened in Germany? A. We have a settlement deal with Germany, or we had, whereby the German participation on our through cable service to and from Germany and under OMGUS, 75 percent of the dough for the American carrier and the remaining 25 percent for the German side.

That is, on through cable service. Last fall we found that, if we were to continue to do business with the reincarnated Reichspost, now known as the Deutschpost, and we wanted business from Germany, we could get it, with or without radio nationalism, provided we paid good American dollars and matched the radio participation, and we have.

Q. What is that? 50 percent? A. And we are paying 50 percent, and we are getting the business.

I suppose we might do that in Holland some day, if we have to.

I am opposed to it. I think it is uneconomic; I think it is unAmerican, and I think it is draining away good American money in futile competition, with no business in sight, and in a declining market.

Mr. Wendt: That concludes our testimony.

The Presiding Officer: We will resume at 10:30 Wednesday morning.

(Whereupon, at 5:10 p. m., the hearing was recessed, to reconvene at 10:30 a. m., May 5, 1948.)

Kenneth E. Stockton; for Intervenor—Cross.

[863] KENNETH E. STOCKTON was recalled as a witness for America Cable & Radio Company and, having been previously duly sworn, was examined and testified as follows:

Cross examination by Mr. Margraf:

Q. Mr. Stockton, what positions do you hold in the I. T. & T. System? A. I am vice president of the I. T. & T., and director; vice president and director of the International Standard Electric; and president of American Cable & Radio, Commercial Cable, and All America Cable & Radio, and Director of Commercial Cable, All America, and Mackay Radio.

Q. Are you an officer of Mackay? A. No.

Q. How long have you been a director of I. T. & T.?

A. I think it is since about 1939. I am not sure.

Q. What is the scope of your operations, your field, as vice president of I. T. & T.? A. At the present time, I just try to pay attention to American Cable & Radio. It is advisory on other matters, and purely advisory for consultation on general European matters, mostly.

Q. How long have you been employed by or an officer or director of I. T. & T.? [864] A. How long?

Q. Yes. A. Since 1925.

Q. And what was your first position with I. T. & T.?

A. General attorney for International Standard Electric Corporation.

Q. Beginning in 1925? A. Beginning at the end of 1925. I think it was October, 1925.

Q. And then what else did you do with I. T. & T.? A. I was European general attorney from 1926 to—well, I do not know exactly when that title stopped, whether it was 1938 or 1939, whenever Mr. Frang became European counsellor.

Mr. Werner: Just to clarify, if you do not mind, Mr. Margraf, you were general attorney for the I. T. & T. System?

Kenneth E. Stockton, for Intervenor—Cross.

The Witness: I was general attorney more or less for the International Standard Electric, especially, but handled also general I. T. & T. work in European negotiations.

By Mr. Margraf:

Q. How long have you held positions with the American cable and radio companies, or any one of them? A. As nearly as I can recollect, it was right after the completion of the Postal reorganization. I think it was about 1940, or something like that.

[887] Q. Do you have, in convenient form in your notes, Mr. Stockton, the names of the officers? If you will just read them out. A. Of the American Cable and Radio?

Q. Yes. A. The officers are Wolcott H. Pitkin, Chairman of the Board, Kenneth E. Stockton, President, Forest L. Henderson, [888] Executive Vice President, James A. Kennedy, Vice President and General Attorney, Chancey R. McPherson, Vice President and Secretary, Harvden Pratt, Vice President and Chief Engineer, Charles D. Hilles, Jr., Vice President, Luke McNamee, Vice President, Bertram B. Tower, Comptroller, Oswald C. Buchanan, Treasurer.

Q. Do you have the directors of American Cable and Radio? A. Directors are Sosthenes Behn, Forest Henderson, Robert Lehman, Luke McNamee, Paul E. Mannheim, Warren Lee Pierson, Wolcott H. Pitkin, Kenneth Stockton, George W. Weeks.

[890] AAC&R Inc. officers:

J. L. Merrill, Chairman of Board
W. H. Pitkin, Vice Chairman of Board
K. E. Stockton, President
F. L. Henderson, Executive Vice President

Kenneth E. Stockton, for Intervenor—Cross.

J. A. Kennedy, Vice President and General Attorney
 Haraden Pratt, Vice President & Chief Engineer
 C. R. McPherson, Vice President
 B. Tower, Comptroller
 O. C. Buchanan, Treasurer

Directors:

Merrill, Pitkin, Stockton, Hammond, Henderson, Pierson, McPherson, Roemer, Roosevelt.

C. C. C. Officers:

K. E. Stockton, President
 F. L. Henderson, Executive Vice President
 J. A. Kennedy, Vice President and General Attorney
 C. R. McPherson, Vice President
 L. N. Anderson, Vice President
 Jas. Milne, Vice President
 Morgan Heiskell, Vice President
 B. Tower, Comptroller
 O. C. Buchanan, Treasurer

Directors:

C. Burden, K. E. Stockton, F. L. Henderson, T. V. Jordan, [891] W. L. Pierson, H. Roemer, and W. H. Pitkin.

MRT Officers:

L. McNamee, President
 F. L. Henderson, Executive Vice President
 J. A. Kennedy, Vice President & General Attorney
 Haraden Pratt, Vice President & Chief Engineer
 C. E. Scholz, Vice President
 C. R. McPherson, Vice President
 C. C. Chapman, Vice President
 A. C. Jorgensen, Vice President
 E. H. Price, Vice President

Kenneth E. Stockton, for Intervenor—Cross.

L. Spangenberg, Vice President

B. Tower, Comptroller

O. C. Buchanan, Treasurer

Directors:

Stockton, Pitkin, Henderson, Jorgensen, McNamee,
Pierson, Pratt, Price and Spangenberg.

CPC Officers:

Frank Flynn, Vice President

Mullahey, Vice President

J. A. Kennedy, General Attorney

E. McKeon, Treasurer

T. V. Jordan, Secretary

Directors:

Bacon, Flynn, Ginman, Jordan, R. Lehman, O. Shea,
[892] Pitkin and McCante.

By Mr. Margraf:

Q. Who is the operating head of American Cable and Radio—are you? A. I am nominally that, but Forest Henderson probably, I would say, is more nearly the operating head. I decide questions of policy, but he decides questions of operation—operating practice.

✓ Q. Who is the operating head of All America? A. Mr. Henderson.

Q. And Commercial Cable? A. Mr. Henderson.

Q. And Mackay? A. Mr. Henderson—from an operations standpoint?

Q. Yes. A. That is right.

Q. Is Mr. McNamee—Admiral McNamee—active in the—A. He is President of the Mackay Radio and I am President of all the other companies.

Kenneth E. Stockton, for Intervenor—Cross.

Q. Is Admiral McNamee still active in the operations of Mackay? A. I would say not.

Q. Who is the operating head of Commercial Pacific?

A. Mr. Frank Flynn.

[894] Q. Who decides such questions as new circuits for which Mackay should apply? A. I should say I decide it after consultation with the staff.

Q. After consultation with what staff? A. Of the American Cable and Radio: Mr. Henderson, Mr. Scholz, Mr. McPherson, Mr. Tower, Mr. Jorgensen.

Q. Is there a formal group which passes upon such questions as that? A. I wouldn't say so, no.

Q. Who decides such questions as the routing of traffic among the various AC&R companies? A. That is an operating question that the fundamental principles are decided by Mr. Henderson in consultation with me, and how those principles are applied when you get down to details is a question for Mr. Henderson and the men in the operating department under him, probably Mr. Wiseman, Mr. Scribner.

[895] Q. When you make a decision as to the routing of traffic—for example, routing of traffic over Commercial Cable or over Mackay—to a point where both companies may serve directly or indirectly, in what capacity do you act? Are you acting as President of AC&R or as a Director of Mackay or as a President of Commercial? A. I am probably acting in about three capacities, as President of AC&R, and if it is a question of conflict between Mackay and Commercial Cable circuits, as a director of Mackay and as a President of Commercial Cable.

Q. So that you can't identify your own position as acting on behalf of one of the companies or another in making such a decision as that? A. The decision is made for generally

Kenneth E. Stockton for Intervenor—Cross.

speaking what is for the best interests of the system as a whole.

Q. Is that same situation true with respect to the other officers of the company who participate in such decisions?

A. I should say so—all the top officers I have named.

Q. Is that situation true also with respect to decisions which are made as to the circuits for which Mackay should apply? A. Yes, I should say so.

[896] Q. As I understand your testimony, the decision that is what would be best for the System as a whole, is that correct? A. Yes, because we cannot see how you can separate the interests of Mackay from the interests of the system as a whole.

Q. Are you familiar with the circumstances leading up to the organization of the companies in the IT&T System to engage in radio telegraph business?

A. I will have to ask for a little more information on that.

Do you refer to the Mackay companies in the AC&R System?

By Mr. Margraf:

Q. Yes, the companies and their predecessors which are now in the AC&R system? A. I am generally familiar.

Q. Let me ask you this: is it not true that the IT&T organization was engaged in telegraph activities by means of cable during the twenties, is that true? A. Both cable and radio.

Q. When did the activities in radio begin? A. They started prior to the—the IT&T had no activities in either cable or radio prior to the acquisition [897] of All America Cable.

Q. When was that acquired? A. I think that was acquired in 1927, I am not sure but I think so.

Kent E. Stockton, for Intervenor—Cross.

[898] Q. When did IT&T acquire the Commercial Cable Company? A. I think it was about a year later, in 1928.

Q. At the time of that acquisition did Commercial Cable Company or All America have affiliated companies engaged in radio telegraph activities? A. Yes. At that time it is my understanding that when we acquired Commercial Cable they already had taken some action toward radio activities.

Q. Do you know the nature of those radio activities? A. It was through the operating end of what was the Federal Telegraph in California, and I do not know personally offhand whether the Delaware Company—the Delaware Mackay Company—was formed before Commercial or after the IT&T acquired control of Commercial.

Q. Had the Mackay Radio and Telegraph Company of California been formed by that time? A. I have always thought Mackay Radio and Telegraph was an offshoot of the Federal Telegraph of California.

Q. That is Mackay of California? A. That is Mackay of California. So I would think it had been formed, or that its predecessor company was already in existence.

Q. And by the time IT&T acquired Commercial Cable Company, is it not true that Commercial Wireless, Inc., a subsidiary of Mackay Companies, had been formed, to engage [899] in radio telegraph activities? A. I would think so.

Q. And Commercial Wireless, Inc. later became Mackay Radio and Telegraph Company of Delaware? A. That is my recollection. I have been told that is so. I can't speak from personal knowledge.

Q. Do you know the purpose which the parent companies of the Commercial Cable Company, had in organizing the radio telegraph companies? A. I think I know the purpose.

Q. What was the purpose? A. I think the purpose was the realization that the radio telegraph of the RCA constituted a grave danger to the cable business, that their ability to go out and make deals with foreign administrations and give them half of the revenue from the operation

Kenneth E. Stockton, for Intervenor—Cross.

of the telegraph circuits, was going to cut the cable companies' throats sooner or later, and that it would be necessary to protect themselves by organizing a competing similar organization which would be able to offer the same inducement to foreign administrations that RCA did.

[900] Q. In building up that radio organization was it the plan to swing the traffic from cable to the radio [901] companies? A. I don't know whether it was at that time or not. I think that was something that may have been present in their minds, but I think they were probably more concerned with the inevitable swing of the traffic, because of the foreign administration to pass traffic it picked up over radio circuits in which it would have an interest.

Q. To what extent would you say it was the purpose of the parent companies to establish radio circuits as alternate routes to cable routes? A. I am not qualified to say what they thought at that time. I can tell you what I think at the present time but at that time I was not in New York. I was stationed abroad.

Would you like me to tell you what I think they should have thought?

Q. Yes, I would like you to. A. I think they certainly should have figured on setting up a radio network that would be world-wide, competing, if possible, with every point touched by their cable circuits.

Q. Competing with RCA? A. And competing with their offering a duplicate service to their own cables.

Q. At the present time, Mr. Stockton, do you concede [902] it to be the purpose of Mackay to compete with All America and with Commercial Cable? A. It is not exactly competition. It is the offering of an alternate form of service. I don't know exactly that you can call it competition. We have got two facilities which we can offer to the customer.

Q. In some instances, as I understand it, traffic which is offered to Commercial Cable Company; for example, and

Kenneth E. Stockton, for Intervenor—Cross.

which is unrouted by the sender, is sent over Mackay's circuits, is that correct? A. What do you mean by "offered to Commercial Cable Company"? Because at the present time it is a little bit difficult to say if the traffic is unrouted whether it is offered to Commercial Cable Company. It is offered to the AC&R System more or less.

Q. If a customer comes into AC&R office and wants to send a message what kind of blank does he get? A. He comes in an AC&R office?

Q. Yes. A. He will either offer them at the present time a commercial blank or a Mackay blank if it is a point in Europe, offer them an All America blank or a Mackay blank to a point in South America.

Q. Is he offered two blanks if it is a point in Europe—a Commercial and Mackay blank? [903] A. I think all those offices are provided with two blanks and there is not supposed to be any effort to swing the customer's desire one way or the other.

Q. Within the system? A. No. What we want to do is to have him mark it with an AC&R via, either Mackay or Commercial or All America.

Q. Suppose he writes his message out on a Commercial blank and sends it to the attendant. Are there instances where under such circumstances the message is sent over the Mackay circuit? A. Surely.

Q. Where that occurs, do you conceive that Mackay is competing with Commercial? A. No. Where it is sent under such circumstances over a Mackay circuit, it is because Mackay can offer a service that is superior to Commercial's, either because it has a direct route to the point of destination, or because it can effect a quicker delivery.

Q. In the event they are granted a circuit to The Netherlands in this case, as I understand the testimony, at least a certain amount of the unrouted traffic which is offered to Commercial would be sent over Mackay, is that correct? A. I think so.

Kenneth E. Stockton, for Intervenor—Cross.

[904] Q. Suppose such a message, destined for a city in Holland which is neither The Hague nor Amsterdam nor Rotterdam, were turned over to the AC&R System? A. I forget what the terms of the contract are, but whatever the proposed Mackay contract requires, we turn it over to Mackay.

Q. You don't concede that Mackay is competing with the other AC&R companies for that traffic, do you? A. I don't exactly feel it is competing, no.

[923] Q. In your testimony, Mr. Stockton, there was a suggestion to the effect that Mackay was prevented from establishing a circuit with The Netherlands because of provisions in RCA contracts. Do you have any explanation as to why a circuit with The Netherlands was not established after the entrance of the consent decree to which you referred in your direct testimony—the consent decree of 1935? A. Of 1945?

Q. '35. A. No. Except I think that was one of the countries influenced by the Oslo decision.

Q. So you feel that it was not a provision of the RCA contracts but rather a decision of the Commission— A. That is right.

Q. —which might have influenced the Dutch? [924] A. I don't think, after that final agreement, the RCA contracts legally were what stopped us at all.

Q. Did Mackay have a circuit with Portugal prior to the last war? A. With Portugal?

Q. Yes. A. I don't think so.

Q. Was it ever authorized by the Commission? A. I don't know.

Q. I refer you to Exhibit 7, item 153, which indicates that Mackay applied to the Commission and was authorized to open a circuit with Portugal on May—that is the application was granted on May 5, 1942, no circuit was opened and the authorization expired on June 1, 1943. Do you have

Kenneth E. Stockton, for Intervenor—Cross.

any reason to doubt the accuracy of that item? A. No. I suppose that was one of that whole batch that were obtained at once, practically.

Q. Do you know the reason for your failure to open the circuit with Portugal at that time? A. No. I would assume it was the same reason that applied with the other circuits. We didn't open at that time that we had authority to open.

Q. Is it your testimony that there was nothing in the RCA contracts which prevented the opening of the Portugal circuit? [925] A. So far as I know, nothing.

Q. Did Mackay ever have a circuit to Surinam prior to the war? A. Wait a minute. To go back to your last question: that was before the RCA had finally agreed to waive its exclusive right to unrouted traffic, wasn't it? Then the RCA contract may have had an important bearing on the—

Q. As I understood your testimony on direct examination, it was that after the entrance of the consent decree in 1935 there was nothing to prevent a foreign correspondent from owning a second circuit with the second American carrier. Is that not correct? A. I was wrong in that. I was thinking that was the last decree, but the last decree was in 1942, wasn't it, or '43?

Q. There wasn't a decree in 1942 or 1943. A. There wasn't.

Q. No. A. There was a stipulation.

Q. You are referring to action taken by the Federal Communications Commission? A. I don't remember now. I thought it was taken with the Department of Justice being in on it. What I am referring to is when you finally gave a complete clearance and said that any foreign administration could handle non- [926] routed traffic with Mackay as well as specifically routed traffic.

The 1935 decree, as I recollect, said that you would not oppose their making contracts for routed traffic. Personally I think the Chinese arbitration put that out of the way even before the decree did.

Kenneth E. Stockton, for Intervenor—Cross.

Q. So that after the Chinese arbitration there was no longer anything in the RCA contracts which would prevent the opening of a circuit with a second American carrier?

A. I think that is why you people signed the decree.

Q. Then you are not blaming the RCA contracts for the failure of Mackay to open circuits with The Netherlands or Portugal at any time after the date of the Chinese decree, are you? A. Yes, I do blame the contracts.

Q. But you have said that there is nothing in the contracts—

Mr. Kennedy: Let him finish.

A. I said so before, but I was thinking of the time you really came clean and agreed not to have anything in the contract opposing. You got me to say 1935 and I shouldn't have agreed to the '35 date, because under the '35 decree—after the Chinese arbitration in fact—we had the right to try to get an administration to open a separate circuit with us just for routed traffic.

[927] By Mr. Margraf:

Q. And there was nothing in the contract which RCA had with its correspondents which would prevent opening of such a circuit? A. Nothing would prevent opening of such a circuit except that it was an extremely unremunerative and piddling kind of circuit, to put it mildly.

[986] Q. Now, Mr. Stockton, will you refer to Exhibit No. 79? A. Exhibit what?

[987] Q. 79? Do you have that? A. Yes.

Q. That exhibit recites a condition which the Commission required International telegraph carriers to place—or which was placed in the licenses of international telegraph carriers, doesn't it? A. Right.

Q. Was that condition placed in the licenses issued to the AC&R companies? A. I think it was, originally, yes.

Kenneth E. Stockton, for Intervenor—Cross.

Q. Did any of the AC&R companies send waiver provisions out to any of its correspondents pursuant to this ruling of the Commission? A. I don't know whether they did or not, but I should think they did.

Mr. Margraf: Will you submit that, Mr. Kennedy? I would like the record to show whether any of the AC&R companies—

[988] Mr. Kennedy: The waivers were sent to affiliated companies, being so called SARA, and CIDRA, which is another IT&T subsidiary in Buenos Aires, and to the company known as CRIB in Rio de Janeiro, another IT&T subsidiary, and to the IT&T subsidiary in Santiago, Chile, also, later on, after the war, to the Austrian company, and to Denmark and to Salvador.

[996] Q. Now, let me ask you, is this theory of free and open competition which you have expounded, Mr. Stockton, the basis for the Mackay applications in this proceeding? A. I do not know what you mean by that question.

[997] Q. My question is too broad. It is in reliance upon that theory that Mackay is applying for duplicate circuits? A. Right.

[998] Q. As I understand your testimony, Mr. Stockton, you do agree that Mackay is a strong competitive factor in the telecommunication industry today? A. Yes, sir. I am proud of it.

[1002] Q. Now, is not the AC&R system, embracing both radio and cable facilities of that system, a very strong competitive force in the radiotelegraph industry? A. We would like to think so.

Kenneth E. Stockton, for Intervenor.—Cross.

Q. Are you not, as a matter of fact? A. I say, we like to think so.

Q. Does the parent of AC&R, that is, the IT&T, and also does AC&R represent that it operates both the largest American International Communications network—telephone or telegraph or both? Is that representation made? A. I think that representation is made. I think that is correct.

• • • • •

Q. Let me continue on some of these representations. Is it true that AC&R companies represent that, "These companies constitute an unequalled international telegraph system [1003] under American ownership, offering assurance of speed of service and reliability that only the instant availability of both cable and radiotelegraph transmission is able to provide"? A. That is right.

Q. That is on page 40 of Exhibit No. 198, or the annual report of IT&T for 1947.

Now, that representation is made, is it not? A. It certainly is.

Q. That position is achieved without the benefit of these three circuits for Mackay, was it not? A. Yes.

Q. Now, is it not true— A. But it would never have been achieved if we had not gotten circuit after circuit.

Q. Is it true that the representation is made by the AC&R system that, "In the second full post war year the AC&R system was the only international telegraph carrier to show an increase in the volume of business handled"? A. That is right.

Q. That is taken from page 41 of Exhibit No. 198. That representation is made, is it not? A. Yes, sir.

Q. And the AC&R system was able to show that increase without the benefit of these three circuits, was it not? A. That is right.

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[1009] Q. Now, Mr. Stockton, on page 136 of the transcript, you made reference to "Not only these three, but

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other circuits that will come up in the future". Is it the plan of Mackay to apply for duplication of all RCA circuits? A. Yes, sir.

Q. To every point? A. Yes, sir.

[1011] Q. Do you think that even though the existing carrier [1012] is thrown into loss operations, the duplicate circuits should be granted? Is that right? A. Where that does not create a monopoly situation.

Q. I do not know what you mean by that. A. I mean, supposing you have two carriers serving a point.

Q. No. We have taken an example of three carriers. I understand your position. But let us assume the position which was last given of only one carrier serving the point and the second one seeks to come in. A. The second one seeks to come in. If that is going to put that particular carrier in the red, I still do not believe that is any reason for not having the second circuit.

Q. Now, should the Commission then consider the possibility of rate increases to that point and permit the carriers to re-comp the losses by rate increases? A. I think that depends on the circumstances of that particular point. If it is a small point it never can be said to stand on its own feet, and it is merely a side-feeder to a general system of communications, then I do not know whether you can say that you were entitled to a rate increase for each particular point, because—

Q. Suppose it is a large point. A. Let me finish. If it is a large point, then I think, as I understand public policy to be laid down by the law; [1013] which says, as I understand it, to the effect that the competition should be fostered, I think the Commission should permit and foster competition to those large points even if it has to increase rates to do it.

Q. Even though the public must pay the freight for the increased competition? A. Paying the freight for what it has expressed the desire to have, and that is competition.

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Q. You do have competition for these circuits without the presence of competition from another radio carrier, do you not, Mr. Stockton? [1014] A. Yes, to Holland.

Q. You are back to Holland. And to Portugal and to Surinam? A. I do not think your competition to Portugal is as complete as it is to Holland.

Q. I just want to say that you are not contending there is no competition in the handling of telegraph traffic to those points, are you? A. No, I am not contending there is no competition.

Q. So the public has the benefit of competition to these points; is that not it? A. Yes, but it is a very inadequate competition, and to limit it to its present state would be inadequate competition.

[1015] third one does not, but it gets it a little closer to the line, and the fourth or the fifth or the tenth finally throws it into a loss operation. Do you think that should continue? A. Which operation?

Q. It depends on who is doing the applying. The shoe may fit either foot, but the point I am asking is, is it your view that the Commission should permit this increasing encroachment upon the earnings of the existing carrier, whether it be Mackay or RCA, to continue and grant all the circuits except, perhaps, the last one? A. I think they should grant them all.

Q. Even the last one? A. Absolutely.

Q. Which throws the— A. Throws what? That is what you do not specify. Whether it throws both the existing carrier plus the Mackay into the red or merely the Mackay, or merely the existing carrier?

Q. Let us take first the existing carrier, whether it be Mackay or RCA. It throws the existing carrier into the red, the last encroachment does. A. I should say it should be granted.

Q. Now, suppose the new carrier should be in the red also because it can not make any money out of the circuits?

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Should it still be granted? Should all these applicants be [1016] granted all along the line? - A. In other words, you say if you have two complete radio networks covering the whole world and they are both in the red—

Q. That is right, because they are competing for each of the points. A. Because they are competing for each of those points, should that be permitted?

Q. That is right. A. And I say yes, because the rates are then obviously inadequate.

Q. And you say, then, that the public should make up for the expenses of that competition and the rates should be increased accordingly; is that right? A. Yes. I do not believe that it would be necessary.

[1018] Q. So there are some limits, then, on your position? A. No, there are no limits.

Q. On your position that there should be free and open and competition to all points? A. There are no limits, because I say that then the Commission should raise the rates in order to keep the system of competition alive.

Q. So you think the Commission should continue to raise rates? Are any limits on the rates that you would put? A. So long as the public policy is laid down that we want competition in the United States and they do not want to set up a situation such as exists in the telephone field, then I think that Congress has laid down that rule, and that the Commission's job is to foster competition and not to create practical monopoly.

[1022] Q. Let me read you a statement which seems to express the views of Mr. Sosthenes Behn on the merits of not duplicating operations, and the merits to the public in the matter of rates from these operations, and see if you agree with Mr. Behn.

What position does Mr. Behn hold in the IT&T system?

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Q. President of the IT&T? A. Yes, sir.

Q. Is he also Chairman of the Board? A. Yes.

Q. Now, this statement is from hearings on S6, the Session of the Senate Interstate Commerce Committee, held on June 17th, 1929, at page 1047 of the printed transcript of the hearing.

Senator Dill asks the question:

"In your statement, you recommend the repeal of Section 17 and give as a reason that it will bring lower rates".

As I understand it, Section 17 is now the Section which [1023] became Section 314 of the Present Act.

Mr. Behn answered:

"Well, Senator, we will have less expense, less overhead expense. We will not be building up these tremendous separate plants and investments... There is not enough traffic to have two radio stations going at the same time, doing about the same business generally, and they will have their separate overhead. The Radio Corporation will build up their system and we will build up ours, and we will have two capital investments."

Now, is not the import of Mr. Behn's testimony that the public would suffer from such competing operations, where both companies are building up their separate plants and separate investments? A. I would not say it was proper. I would say the public might pay more, but there a lot of times you pay more and get pleasure out of it, but at least legislatively you are supposed to get pleasure out of it.

Q. Mr. Behn, as I understand his testimony, with recommending that the situation be not created where the public is subject to that disadvantage. Now, do you disagree with Mr. Behn's attitude on that score? A. No. I think I should go on and amplify what you did not seem to have amplified in explaining the quotation, and that is that this was on a hearing for a bill to permit the [1024] acquisition of the

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RCA by IT&T, after the RCA had agreed to sell out, and subject to the necessary legislation being passed. It is perfectly true that when and if Congress decides that it is not in the public interest to have competition in the telegraph field, it will be probably be cheaper for the public in the way of rates to have a single entity, but that situation, which has been attempted to be changed several times, has not been changed. The legislative position is still the way it was. As I understand it, the public policy rule is that there should be competition, and I think it is the duty of this Commission to foster it.

Q. You said you understood the Oslo case, and you have said that the Oslo case did not so hold. I don't want to argue with you as to what the policy is; because I think we understand what your view is, and that your view is, as you have admitted, contrary to the view of Congress as interpreted by the Oslo case. A. I did not mention anything about Congress. As interpreted by the particular court that decided the Oslo case, I think that its views are not in accord with mine on certain points of the public policy.

Q. Nevertheless, Mr. Behn was pointing out disadvantages from the rate standpoint of duplicating radio facilities, was he not? A. There is no debate about it that if you eliminated [1025] competition completely, you could reduce rates.

[1027] Q. I do not want to argue with you on public policy, by Congress, because the case will speak for itself.

Let me read you this statement and see your reaction to it. I will say in advance that this is from a brief filed on behalf of All America Cables and Radio, Inc., in *Rocket* [1028] 5390 et al, dated March 27, 1939, the Ecuador case:

"One school believes that in the case of regulated industries where price and service are controlled by the public, it is better to have the facilities adjusted so that they will be reasonably adequate and not

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excessive and so that the companies rendering this service can remain in a sound financial condition. This school believes that in the long run the public, whether in the capacity of consumer, taxpayer, or investor, has to pay for the provision of unnecessary facilities and that in the long run good service is not furnished by ruined and unprofitable companies. The other school believes that we must preserve competition at any cost, even though it results in the multiplication of unneeded facilities and in the ruin of companies providing those facilities."

Now, there does appear to be these two viewpoints, does there not? A. Not necessarily, because—

Q. Do you believe— A. Just a moment.

Q. This is your brief? This is the brief of All America?

A. But you asked me if the—

Q. I want to ask your reaction. A. I thought you were through with your question.

[1029] Q. I want to ask your reaction to that statement, and I will repeat it if you want me to, which point of view of these two expressed here is the one that you are espousing? A. On that particular case, if I remember correctly, that was while the principles of the Oslo case were being applied by the Commission, or at least they had held in the Oslo case that there was sufficient service. Then in the Ecuadorian case, the situation was reversed, and the RCA wanted to get into Ecuador.

Q. But there was no competition existing to Ecuador, was there? A. I do not think so, no, but there was adequate service.

Q. Now, while we are on the point, Mr. Stockton, if you do not mind, I will state the difference between the Oslo case and the Ecuador case. A. Right.

Q. In the Oslo case, there was an application by Mackay for a competing radio circuit, competing with an existing RCA circuit? A. That is right.

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Q. In the Ecuador case, there was an application by RCA for a radio circuit to Ecuador to compete with a cable circuit of All America, but there was no existing radio circuit to Ecuador. So there was not the element of competition [1030] between two radio telegraph carriers to Ecuador. Now, is there not that element of distinction between the two cases? A. There is that element of distinction. But what we always found at that time was that we were getting whip-sawed and no matter what position we stood on. The Commission would deny us to get in to compete with Oslo, and then when you wanted to compete with Ecuador, they would let you in. That is why we took the position that we took in that case and why we opposed your application to get in, because the Commission, we understood, was applying the rules that if there was adequate service to the public, that additional competition was not necessary.

Q. Now, you have not yet answered my question, Mr. Stockton. A. I am explaining now. What is your question again?

Q. My question is which of these two viewpoints is the one which you are espousing? A. I espoused the theory that you should have competition, that you should have competition under the present rule of public policy, even if that means that you have to increase the rates in some cases to do it.

Q. Now, you are espousing the position, then, reading this language of All America, that we must preserve competition at any cost, even though it results in the multiplication of unneeded facilities and in the ruin of companies providing [1031] those facilities? A. Yes.

Q. Now, mind you, we are not talking in the instant case, in the present case, about preserving competition, because you have admitted competition is there. There is competition with other media of communications and within the telegraph industry. A. That is right.

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Q. Now, in All America's statement, though, in 1939—and this immediately follows what appears on page 24 of the brief, the part which I just read—it says, "I think there has been a shift of opinion in the late years towards the first of these theories," which is the opposite theory from the one which you expressed. A. That was the Oslo case?

Q. That is right. A. It certainly does.

Q. Now, reading on, on page 25, this statement is made by All America cables and radio:

"Would any sensible man think that for the sake of getting competition we would do well to have a second company operating between the same points providing [1032] greatly excessive capacity with the result of causing both competitors to do business at a loss? In the long run, the service and the public would both suffer."

The statement of All America in that case was that in such a situation, the public and the service would both suffer. Now, we must keep in mind again that there was a case where there was no competition at all, and RCA was seeking to establish the second carrier, which is different from the present case which we have, where there is competition to the points. I take it that you would not go along with that statement today; you would say that a sensible man does think that we ought to have competition. A. What I say is that if the Commission is going to adhere to the rule of the Oslo case, then I think that they might as well go the whole hog and just decide to establish a monopoly sooner or later.

Q. This argument of All American continues on page 25:

"Competition in unregulated industries must be preserved, but where we have complete regulation, the burden of the argument shifts."

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Let me read further, on an expression of the view of All America cables and radio, in the Ecuador case, as to the holding of the Commission in the Oslo case and see whether you agree with this. This is on page 27 of the brief:

"Let me say again that I think a sound choice between [1033] the two philosophies in question and a coherent application of one of those philosophies is of far greater importance than the immediate business results of this particular case. It seems to me that the Commission went along toward choosing, and choosing soundly, between these philosophies when it decided the Oslo case."

Are you in agreement with the statement of All America as of that time? A. I am not in agreement with it today. At that particular time I was certainly in agreement with it.

Q. You were in agreement with it at that time? A. Yes.

Q. Your theories of competition and the detriments to the public have changed since 1939? A. No. My theory at that time was that there was no use butting my head against a stone wall. The Commission had taken a position that it was not going to care much about free competition, and it was going to apply principles of whether there were profits or loss, or whether you could prove an affirmative benefit in rate reduction or otherwise to the public. I must say today my own feelings have undergone some change, because I believe that the Commission itself has changed, and I hope that the rulings are not going to follow the Oslo ruling.

[1036] Mr. Kennedy: That was in 1939, Mr. Stockton.

The Witness: That may have been before. At any rate, I was connected with the management at that time, and I am going to take full responsibility for what was said there. Personally, I do not believe

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it was sound, and I do not believe the companies ever believed that the principle of the Oslo case was sound. But if the Commission is going to adopt the principle of the Oslo case and the courts are going to affirm it, from then on it becomes the law until it is overturned. I hope it will be overturned as a matter of administrative law.

Mr. Werner: Yes. Am I going to understand your testimony to mean that although the brief stated that All America thought the Commission's policy as laid down in the Oslo case was sound, actually you did not believe what that statement said?

The Witness: I think that was a euphonism.

Mr. Margraf: That is the concluding statement in the brief.

The Witness: There was no use in our telling the Commission that we regarded it as unsound when we were trying to use their decision in the Oslo case to keep ourselves from being cut on the other side of the throat.

By Mr. Margraf:

Q. With respect to euphonism, Mr. Stockton, that [1037] statement about the soundness of the Oslo case in the last sentence in the brief which I read, which is a kind of wind-up punch. A. We thought that we had been deprived by the Oslo case of a right to free competition, and we thought that the Oslo case was decided on a lot of principles of public utility law that I do not believe are applied by legislation yet, or applicable yet, by legislation, in the telegraph field. And consequently, we felt that if the administrative body was going to follow the rules of other public utility decisions, we wanted to get the benefit of them when somebody else was coming in and attempting to invade our field. We should not be whip-sawed both ways.

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[1038] Q. Mr. Stockton, as I understand your responses to my questions, you were of the opinion that the Commission should permit competitive radio telegraph circuits, even if that resulted in the necessity for rate increases to permit carriers to continue in the business. Now, do you put any limit on where such increases are to stop? [1039]

A. I think I also put a limit on the amount of competition. I said if you have complete competition and completely new competitors coming in, then they may reach a point which may put them all in the red, and the Commission may say that the rates are still proper.

Q. Too low? A. No. They may say they are still proper, because they would support fewer competitors. But I think that the rates should be adequate to support free competition between at least two carriers who represent both cable and radio.

Mr. Werner: You mean, two cable carriers?

The Witness: Either one radio and wire, as we are, and a cable carrier and radio carrier against us, or two combined cable and radio carriers. In my opinion, that is the modern picture of complete communication, a combination of cable and radio.

By Mr. Margraf:

Q. As I understand your testimony, you did not place the limit on two of the carriers, but you said more carriers should be permitted? A. That is right.

Q. And if the rates were too low to permit carriers under such a condition of competitive operation to engage in operations at a profit, the rate should be raised? A. Right.

[1040] Mr. Wendt: Excuse me, Mr. Margraf. I am not sure that I understood you, Mr. Stockton. Just what type of carriers should be there?

The Witness: I think there should be two cable competitors and two radio competitors.

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Mr. Wendt: Two cables and two radios? That is what Mr. Werner asked.

The Witness: There should be two complete competitions. Now, you can have other radio carriers come in and other cables come in there, but I do not believe the rate should be raised to support an unlimited number of competitors.

Mr. Werner: Let us see if I understand your answer correctly. You say the rates should only be high enough to support one radio carrier one cable carrier?

The Witness: No; two. To support competition in both fields.

Mr. Werner: Two cables and two radios?

The Witness: Two cables and two radios, so you have complete competition in both cable and radio. But even that is not to any one point, but only, for example, to large points, such as England.

Mr. Wendt: Is not the end result of that theory, Mr. Stockton, simply this, that we can not have competition as you want it in the absence of the American Cable & Radio Company? You could never have the competition of which you [1041] speak, of two cable carriers and two radio carriers, without having the American Cable & Radio at that point?

The Witness: Probably not.

Mr. Wendt: So, as I say, the end result of your theory is that in the absence of the presence of the American Cable & Radio, in both its forms of operation, that is, cable and radio, we can not have real competition?

The Witness: You might have. Western Union might develop radio, too. It has never done it in the International field.

Mr. Wendt: Let us just consider the situation as it exists today.

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The Witness: As it exists today, you can not have two cable carriers without having American Cable & Radio in it, and you can not have two radio carriers. But I think that to offer complete service to its customers, American Cable & Radio must be able to offer full competition on cable and full competition to all radio points. I was trying to answer Mr. Margraf's question as to what the limits on that were, in my opinion.

By Mr. Margraf:

Q. But you would put a limit now on this free and open competition; is that right? I understood you to say before that you would not put any limit on it. A. The only limit I would put on it is whether the [1042] Commission raises rates.

Q. Now, within the limits that you have placed on it, if circuits are duplicated throughout the entire world, where there are circuits between radio and telegraph carriers, would you permit whatever rate increases are necessary to enable both of the carriers to operate at a profit? Is that right? A. Yes.

Q. Without any limit? A. It would be very negligible.

Q. Now, do you envision the possibility, Mr. Stockton, of increases of the rates to a point where the carriers would be, in practical effect, priced out of business? Is that not possible? A. It is possible, but then it is a question of whether the carrier wants voluntarily to get out of business. I do not think that the Commission should substitute itself for the principle of competition and force a carrier out of business.

Q. So you would say, let the Commission go ahead and duplicate the circuits, permit duplication of the circuits, and permit corresponding rate increases if necessary to enable the carriers to operate at a profit, notwithstanding the fact that the carriers might reach a point where they

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price themselves out of business? A. You will not reach such a point.

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[1046] Q. Now, Mr. Stockton, a little while ago you stated the purpose of the hearings on S-6, which were held in 1929. Is it your understanding that Congress in the Communications Act stated the policy, or rather has prohibited persons engaged in wire telegraphy from operating a radio telegraph service if the effect would be substantially to lessen competition? Is that not the purport of Section 314 of the Communications Act? A. That is the language of the White Act, is it not?

Q. Now, is it not true that hearings on S-6, which were held in 1929, were for the purpose, or at least partly for the purpose, of considering the desirability of permitting a merger of the telegraph, wire, and cable, and radio telegraph carriers? A. They were for the purpose of permitting the acquisition of the RCA, yes.

Q. If that legislation had been passed, it would have been possible for a system engaged primarily in cables and wire communications to acquire radio telegraph facilities; is that not true? **[1047]** A. Or for a system which was engaged in radio facilities to acquire a cable system.

Q. Yes. But you say that the thing that was in the works then was the purchase of the RCA Radio-Telegraph System by IT&T? A. But at that time, the IT&T included a very substantial beginning of a radio telegraph system, so that legislation was not only for the purpose of acquisition by cables of radio, but the elimination of competition in the telegraph field, changing the whole legislative policy theretofore established.

Q. Was it the desire and purpose of IT&T at that time, as expressed in the testimony of Mr. Behn, to acquire a substantial world-wide telegraph system through purchase; isn't that the thing that was desired? A. Not only that. It was the desire of Mr. Sarnoff to sell the world-wide radio telegraph system.

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Q. All right. But that was the desire of the IT&T, to acquire this system? A. Yes.

Q. And is it not true that S-6 was not passed by Congress? A. That is right.

Q. Indicating a Congressional disapproval of IT&T's acquisition of this world-wide radio telegraph system in that [1048] manner? A. No. I think it merely indicated that the Congress stuck by its original decision that public policy required competition.

Q. Public policy as stated in what is now Section 314 of the Act, required competition between cable and radio; is not that it? A. That was stated at the time, also.

Q. If IT&T had acquired the radio telegraph operations of RCA, there would no longer have been radio competition between RCA and the IT&T cable system, would there? A. And between RCA and the IT&T radio telegraph system.

Q. That is right. Now, since the hearings on S-6, IT&T has, one by one, and sometimes two by two or four by four in the war days, acquired more circuits, and it has gone out and expanded in the radio telegraph operations, accomplishing by indirection the same thing which the Congress would not permit it to accomplish directly in the legislation proposed in S-6; is that not true? A. I think it is absolutely contrary to fact.

Q. Why is it? A. What happened was that IT&T had an existing radio telegraph business in 1929 and 1930 when this S-6 was under consideration. It expanded that existing radio [1049] telegraph system business.

Q. How many circuits did Mackay have in 1929? A. They had quite a little business—I do not know how many circuits—on the West Coast.

Q. And it was a pretty small operation as compared with present operations of Mackay, was it not? A. That is right.

Q. Would you refer to Exhibit— A. But I think by that time they had acquired the Sayville Station.

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Q. Let us look at Exhibit No. 157, Mr. Stockton. I have no objection to counsel's supplying or giving you a paper, as long as it is not the answer to the question that I have in mind. A. It is a resume of what I testified to on my direct.

Mr. Margraf: I have no objections.

The Witness: I thought you might be going to quote from my direct. I will show you what it is. It is just a list of those things.

By Mr. Margraf:

Q. Will you refer to your Exhibit 157? A. Exhibit 157?

Q. Yes. Does not that exhibit show that the Mackay operations as of 1929 were pretty small, in messages less [1050] than 50,000? A. Yes. It was certainly relatively very small compared to what it is now.

Q. That is shown also in Exhibit 156. I was looking at the chart on Exhibit 156. A. I think they had New York and San Francisco and San Francisco-Honolulu, and New York-Lima.

Q. So there was not much radio competition existing in those days between Mackay and RCA, was there? A. No, not actual, but potential. I think that is why Mr. Sarnoff decided he was going to sell out.

Q. Now, if Mackay should be awarded duplicating circuits to all points now served directly by RCA and if that should result in putting RCA in such a position that it can no longer operate at a profit, and the rates have reached such a level that they could go no higher, lest the carriers be priced out of business, then certainly the IT&T system would have accomplished at that time everything that it sought to accomplish in its support of S-6, would it not?

A. If you assume all those assumptions that you make, and if you assume that RCA would go out of business or that the Commission would let it go out of business, and that no other competitors had arisen in the meantime, it would

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have accomplished the equivalent of buying the RCA, yes, sir.

[1051] Q. Now, Mr. Stockton, as I understand the purport of your testimony which you have given—and it runs throughout your testimony—the AC&R system feels that it is necessary to engage more and more in the radio telegraph activities as a protection to the cable operations; is that right? That is, you feel that it is a protected interest? A. That is one of the reasons. And the other reason is that we feel we must offer direct radio circuits to every point that RCA does.

Q. Isn't that because you feel that if you do not, your position commercially will worsen? A. Our competitive position will be seriously damaged.

Q. So that all gets back to desiring the additional radio circuits, so that you can protect the cable operations of the company? A. That is right. We think that this new combined alternative cable and radio service that we can offer is an improved service over what either a cable company alone or a radio company alone could offer.

[1052] Q. What is your view as to how RCA is to match this competitive advantage of the AC&R Companies without RCA's having any cables? A. Go right out and buy Western Union cables. They are required by law to divest themselves of it.

Q. How is Western Union to protect itself and to get the benefits of this same kind of combined operation without any radio circuits? A. It is starting radio operations on its lines. I do not know why it should not start radio operations abroad.

Q. Do you think Western Union should be permitted to, and should, as a matter of business, seek radio circuits duplicating all of those of the AC&R system? A. I can not pretend to make business decisions of what Western Union should do.

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Q. Would you interpose any objection to Western Union's seeking to do that? A. No, I do not think so, except that I would be curious to know what they would say about the provision of the law requiring them to divest themselves of their cable properties. If they are unable to divest themselves of their cable properties, as the law now requires, then I certainly think they are entitled to do anything that is necessary to protect their cable position.

Q. Now, as I understand your testimony, you believe [1053] Mackay should be permitted to expand its radio operations to afford protection to the AC&R system as a whole and protection against losses from its cable system; is that right? A. And to enable us to provide what we regard as an improved service to the public.

Q. That should be permitted, this protection to the AC&R system, even though the result of that is to cause the public to pay more money for its telegraph service; is that your answer? A. I do not think it will cause the public to pay more money.

Q. Is not that what it amounts to, though? You said the Commission should permit this to go on even though the rates are raised higher and higher? A. I said if those theoretical conditions occur, it is perfectly possible that the rates might have to be raised, and in such a case, as long as Congress wants competition, I think that the rates should be raised.

Q. So that on the basis of the theoretical situation which I have outlined, you feel that the interests of AC&R should be protected, the Commission should protect those interests, even though the public has to pay the bill in the form of increased rates? A. No, I do not think they are protecting the inter- [1054] ests—

Q. Isn't that what your position boils down to? A. No, it does not boil down to that at all. It boils down to the simple fact that in my opinion the Commission should not throttle the attempt of AC&R to develop as a normal competitor.

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[1061] By Mr. Werner:

Q. Mr. Stockton, I understand from both your testimony and that of Mr. Henderson that the three AC&R operating companies have many employees and perform many functions in common—integration. I believe you referred to joint offices, joint telephone rooms, and a joint service department. Do you know what other functions are performed as a unit; that is, of the three companies that are performed as a unit by the AC&R System?

For example, the messengers. You do not have individual messengers, do you? [1062] A. I think the messenger department is a unit. I would rather that you ask Mr. Henderson on the details of that.

Q. All right, sir. A. I frankly do not know how far it has so far been put together.

Q. Are you familiar with any plans which the companies may have for the further consolidation of those functions, or should I ask that of Mr. Henderson? A. No. I will tell you generally.

Q. All right. A. Our policy is that we are going to affect the greatest consolidation that we can to secure the greatest economies.

[1072] Q. How do you explain, Mr. Stockton, the position of the American Cable & Radio Company and that of the president of the International Telegraph & Telephone Corporation, which has been taken for some 20 years in the past in favor of a merger of International telegraph facilities? I believe, as a matter of fact, Mr. Stockton, that you were one of those persons who testified before a Congressional committee in favor of a merger of international telegraph services and stated certain benefits would result, and that that was more beneficial—if I am misstating your testimony, you stop me—[1073] a merger would be more beneficial than competition? A. It would certainly permit reduction in rates, and it would have very important advan-

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tages in dealing with foreign administrations. As I say, in this case you have to weigh the price you have to pay for either form. But I do not think you can fiddle down the middle.

Q. What I am trying to understand is this. The position that you are now taking is that you believe the Congressional policy is one favoring competition, that as of the present moment you are in agreement with that policy?

A. As a business man, entirely independent of the public interest aspects, I would like to see a merger. I agree, but I think—

Q. Let me ask you at this point, Mr. Stockton, would you like to see a merger because you believe a merger should be more in the public interest? A. It all depends on what the public wants. I mean, if the public wants cheaper rates and you want a company that is able to deal with a foreign administration or is able to meet certain national emergencies more efficiently than a number of foreign companies could, then if the public wants that, that is in the public interest. On the other hand—

Q. What do you think the public wants? A. The public is the only one that really knows what the public interest is, and it expresses it through Congress, [1074] as I understand it.

Q. Let me go back again. I believe you have stated that you are of the opinion that the Congressional policy of competition, assuming that is the Congressional policy, is a good policy as of the present moment. There may come a day, you say, in the near future when that might not be a good policy? A. Yes. I say it might not be a good policy. It may depend on the question of national security.

Q. Yes. I take it you state that that is a good policy because from that policy flow certain benefits to the public, and you have named one of them, namely under a competitive system in the international telegraph field, you are likely to get better service. I think that was one that you specifically named. A. Let me explain where I think the

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dividing line comes. I think that competition is highly desirable, generally speaking. I think it should be restricted as little as possible in any line of business, because I am a believer in the theory of individual initiative, and I believe that is in the public interest.

Q. You are speaking of fields in general? A. Fields in general. Now, when you apply that to the telegraph field, my feeling is that, as long as the telegraph field can support competition, competition is desirable. [1075] That is why I say that that thing will work itself out economically. If you have competition, which I think is more desirable of the two, in the public interest, then you may have to have higher rates than you would otherwise, but it is worth the price for the public to pay to retain that individual initiative, that individual service, to keep away from the bureaucratic form of government. But there come a time when inroads on that business from other businesses may make it impracticable for it to carry the load.

Q. Has that time arrived, in your opinion? A. I think it has darn near arrived.

Q. But it has not at this point, yet? A. I am still hoping we can get more rates out of the Commission.

Q. All right. Now, at this point, the question I want to ask you, if that is your position—I take it your position has some effect on the position of the American Cable & Radio Company and subsidiary companies—how do you square that position with the position which has been taken over the last 20 years by Mr. Behn and Mr. Phelan and by yourself, before Congressional committees, urging Congress to permit a merger of international telegraph facilities, and I take it you urged that on the basis that a merger would be more conducive or would result in more benefits to the public than the system which is presently in existence, namely competi- [1076] tion among those companies? A. Yes, because the position of the telegraph business—before the war it was even closer to the line, almost, than it is now.

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Q. In 1929? A. No. I am thinking of subsequent to that.

Q. How about 1929? A. In 1929, everything was rosy, before the crash.

Q. And I believe merger was urged at that date was it not? A. That is right.

[1085] Q. Is it true, Mr. Stockton, that if the application of Mackay to communicate directly with Portugal that the operation of such a circuit will have a detrimental effect upon Commercial Cable Company's operations to Portugal? A. It will have a very slight detrimental effect possibly.

On the other hand, my feeling is that actually probably the canvassers who were canvassing will get more Commercial Cable traffic to Portugal than they would before.

I mean, they will get a marked via that way, although the man will know that it will probably go by Mackay.

[1086] Mr. Wendt: It will go by Mackay even though it is marked "via Commercial".

The Witness: It might.

Mr. Wendt: You mean you don't recognize routings?

The Witness: Yes, we recognize routings, but if the Mackay circuit would get quicker delivery we would certainly forward it via Mackay.

Mr. Wendt: Even though it is routed via Commercial?

The Witness: That is right.

By Mr. Werner:

[1087] Q. I take it from that, Mr. Stockton, that in the future there will be no attempt to solicit routings via any

[1088] particular company, but that the attempt will be to obtain routings via AC&R, is that correct? A. It will be ACR via the existing routes.

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Q. But there will not be an attempt to obtain routings via any particular company in the AC&R system? A. I wouldn't say so.

Q. I believe it has been testified in previous proceedings before the Commission, I believe in Dockets 7094 and 7412, so-called British Circuits case, and I believe there is testimony in this proceeding also that the practice of the AC&R system is to route traffic over the radio circuit where there is a radio circuit to a point, directly to a point, and where the cable does not have a direct circuit to that point? A. That is right.

Q. It is true, is it not, Mr. Stockton, that as far as competition is concerned between the three AC&R operating companies, that policy has a detrimental effect upon the traffic handled by one or the other of those companies, would it not? A. Quite the contrary. Actually what we are building up, we find that there is still incentive on the part of the Mackay people—radio telegraph people—to handle whatever messages they get in the fastest possible time and to improve their time as much as possible. It is a sort of [1089] inside-the-house competition, who can get stuff through the better.

[1106] By Mr. Werner:

Q. Your attitude, Mr. Stockton, or position, rather, with respect to competition: am I to understand that that goes between competition between cable versus cable and radio versus radio and radio versus cable? A. That is right.

[1107] Q. Do you think it is in the interest of the public that there be competition not only between cable companies, but competition as well between radio companies, and also competition between radio companies on the one hand and cable companies on the other hand? A. You couldn't have put it better.

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[1113] Q. Is it your position, Mr. Stockton, that cable companies can not give effective competition to radio companies? A. No. I think cable companies, under equal conditions, can give very effective competition to radio companies. The difficulty is that the radio-telegraph circuits, where the foreign end is an administration, the administration usually has under its control the entire land telegraph line system, so it gives them a tremendous advantage in pick up and delivery in their own country which you have got to offset by superior courtesy and superior handling between your cable heads.

Q. I take it it is your position that a cable company standing alone can not effectively compete with a radio company standing alone? A. If conditions were equal it can compete, I believe, absolutely; but the conditions are never equal because the [1114] dice are loaded on the other side against you.

Mr. Wendt: Just because of the pay-outs?

The Witness: That is right. Which give the local telegraph administration a personal interest in the traffic.

[1116] Q. I believe you stated that you consider the problems of the American Cable and Radio system as a whole rather than the individual companies? A. That is right.

Q. Isn't it possible that what may be best for a [1117] particular company in the system may not be best for the system as a whole? A. Then you get the same result because I consider it from the system as a whole.

Q. Just as an incidental matter, several questions have been put to you with respect to competition. Is it true that a formal complaint was filed on April 13, 1948 by American Communications Association of the CIO against American Cable and Radio Corporation and Commercial Cable Company, Mackay Radio and All America, alleging that the

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operation of the system was in violation of Section 314 of the Act? A. That is right. But we don't think there is—there are several answers to that. I would just like to explain now that you have raised the question.

Mr. Wendt: Who was that complaint filed with?

Mr. Werner: The Federal Communications Commission.

The Witness: In the first place we feel that Mackay was a part of the AC&R system long before the passage of the White Act, so that there was no acquisition or change of condition. All that has happened is that Mackay has developed. Beyond that, when the Postal reorganization occurred you had a formal court order confirming the transfer of Mackay to the AC&R system, so to us that is just an attempt on the part of the ACA to establish a position [1118] which we consider is contrary to public interest because they want to go back to the old horse and buggy days.

Q. You may or may not answer the question that I am going to put to you.

Q. In view of the amount of consolidation of operations of the three companies, what advantage does the system see in maintaining the separate corporate identities of those three companies? A. There is none. It is a question of mechanics. You have got several complications. One is that the Commercial Cable pension plan is on a different basis from the others. [1119] You have got the fact that All America cables and radio have concessions all in their own name in South America, landing rights in England are in the name of Commercial Cable.

Mr. Kennedy: Which are difficult to transfer.

The Witness: I understand it would require an act of the Canadian Parliament to handle some of

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the questions in Canada. There is a tremendous variety of detailed matter which has got to be surmounted in order to achieve the eventual result that we think should be arrived at, but the strike sort of forced our hand on the matter and forced us to consolidate operations in order to keep going, so we just have consolidated the de facto operations much faster than we could practically consolidate the corporate angle.

[1142] Q. Are you cognizant of any complaints that have been made to your company with respect to the speed of service to Holland? A. No.

Q. To Portugal? A. No.

[1145] Q. If you are going to fork, let us say, the Portugal circuit with the Spanish circuit, wouldn't that increase the load on the operator who is operating that forked circuit? A. That is right.

Q. Then I can't square that with your answer to Mr. Kennedy's question. A. If there is an undue load on him it can be sent over the cables.

Q. But you have an indirect cable circuit to Portugal. That is right.

[1146] Q. And as I understand it, you prefer to send via the direct radio circuit? A. If you can get proper results, the proper accuracy and the proper speed, but if for any reason—take that particular forked circuit, if the circuit is loaded up we have got the possibility of sending over the cable as an alternative.

Q. As I understand it you don't want to send it over the cable where you have a direct circuit available to the point? That is right.

Q. You would prefer to send it over the radio circuit? That is correct.

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[1148] Q. At the present time, Commercial Cable Company handles traffic to Portugal. As a matter of fact I think they handle all the AC&R traffic to Portugal. A. I don't know:

Q. Well, if the direct circuit which Mackay is applying for in this proceeding to Portugal is granted, it is my understanding that all AC&R traffic will then go via Mackay. A. That may be the preferential routing.

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[1158] CARL E. SCHOLZ was recalled as a witness on behalf of Mackay Radio and Telegraph Company, having been previously sworn, was further examined, and testified as follows:

Cross examination by Mr. Hawkins:

Q. Mr. Scholz, I believe you stated at Page 152 of the record that you were a vice president of Mackay Radio and Telegraph Company. A. That is right.

Q. Are you an officer of All America. A. No.

Q. Do you hold any position with All America? A. No. You mean as an officer?

Q. Or as an employee. [1159] I am asking the question because I think on the same page you say that you have been associated with All America for some time, principally in relation to All America's radio operations in Central and South America. A. Yes, as an engineer.

Q. In an advisory capacity? A. In an advisory capacity, and also as an active engineer in the company's engineering activities.

Q. Just what are your duties in so far as All America is concerned? A. The engineering organization of the AC&R companies is rather a joint organization with various engineers employed by the company doing work for Mackay or for All America.

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Q. Is it true that the engineering operations of the American Cable and Radio System have likewise been merged, Mr. Scholz? A. I don't know that. They have been that way as long as I have been associated with the company.

Q. Your answer with respect to All America, I assume, would likewise be true of Commercial Cable? A. Not exactly, because my activities in the engineering affairs of the company are largely confined to radio, and Commercial Cable not being engaged in radio activity there are other members of the engineering organiza- [1160] tion that handle the cable engineering problems for Commercial Cable and All America.

[1173] CARL E. SCHOLZ, was recalled as a witness on behalf of Mackay Radio and Telegraph Company and, having been previously duly sworn, was examined and testified further as follows:

Cross examination (continued) by Mr. Hawkins:

[1206] Q. Have you applied to the Commission for authority to use wire lines between New York and San Francisco? A. We have. We are operating wire circuits at the present time. That was the thing that was established during the strike.

Q. Is it true that the critical shortage of frequencies may have something to do with that, too? A. It's possible.

[1207] Q. You recognize that there is such a shortage? A. I have heard a lot about it, yes.

By Mr. Werner:

Q. You say you have heard a lot about it. Does that indicate that you believe, yourself, that is or that is not?

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A. I believe that the question of the available number of frequencies is rather restricted, yes, its crowded.

By Mr. Hawkins:

Q. Is it true that the available number of frequencies may be further reduced after the international conference now going on? A. Yes, you mean the so-called PFB in Geneva?

Q. I understand there are a number of conferences going on studying this particular question. A. PFB is the one. Yes, no doubt about it, but also as part of the advantages that the radio carriers are going to get, or rather that they are supposed to get as a result of that study of frequencies, is that the frequencies available would be more useful to them.

Q. There will be serious inroads or curtailments in the frequencies available to the point-to-point carriers? A. I believe so, yes, but if the principals set down by the Atlantic City Conference and the establishment of the PFB is carried out as we hope, I think there would be a greater usability of the frequencies by the various car- [1208] riers.

Q. You are not worried about Mackay's position with frequencies? A. Well, I am concerned about it, yes.

[1211] By Mr. Werner:

Q. Is Mackay set up both in its New York stations and its Tangier-Rio stations so that it could operate almost immediately in any countries in the European regime, either on the printer method or the Morse method, either direct or by relay? That is, is there sufficient equipment available there at the New York station, at the Tangier station, so you could open up communications with any country in that area almost immediately? A. Yes, with a limit. I mean, we could not establish circuits with six or eight.

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Q. But I am speaking of one, two or three points. A. The fact is that the Tangier station was prepared and tests were made to operate with Amsterdam, and the facilities are there now.

[1212] Q. That is, you could operate either a Morse circuit out of Tangier, or a printer circuit out of Tangier right now, with, let us say, Amsterdam, or any country in that area? A. That is right, yes.

Q. The facilities are there, and as I understand it? A. That is right.

Transmitters are there, receivers there? A. That is right.

Q. Are there printers available? A. Yes.

[1226] By Mr. Werner:

Q. Just what are your proposals with respect to Portugal? I understand you intended to operate originally with Morse equipment, and fork it with your circuit to Spain. Is it the position of the company that you intend to operate it with Morse until such time as the Portuguese indicate a willingness to operate with a printer, or do you intend to make an attempt to obtain the use of printer equipment or multiplex equipment on that circuit? What are the proposals of the company? A. The proposal is this, that the operation of these two points, Lisbon and Madrid, practically on the same Great Circle bearing, practically the same distance, are two points which are ideally suited for a forked operation.

The circuit and facilities which are being used to [1227] Madrid, working with an associated company, and at the moment they are working on on-off Morse. We formerly worked on-off Morse to Lisbon.

Obviously, on a forked operation the same type of operation must be used to the two ends of the fork.

When the circuit was in and operated in this way it was quite satisfactory. We would like to see, and our general

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policy is with these administrations, where we can take advantage of new technique, frequency shift keying, which is economical from the standpoint of power, let us say, that is used to give an equivalent circuit, or a printer for which it is economical from the standpoint of operation, that we would like to operate the circuit on a printer basis, and we are prepared to do that. But in order to do it, and still fork it with Madrid, it would mean that we would have to provide the necessary equipment at Madrid to our company there so that the same form of operation, namely, frequency shift and printer can be used to both points of the fork.

Q. Then do I understand your proposal, or the company's proposal to be that you do intend to try to convert that circuit to a printer circuit, or not? A. Yes.

Q. How is it that you have not converted your circuit with Madrid to printer up to this point? A. Well, that's just one of perhaps a number—first [1228] of all, there is a question of supply of equipment. I might say as far as the equipment angle is concerned, that we are assembling units—frequency shift keyers, monitors, receivers—in rather fair number, which we intend to use, and to supply to our correspondents or, rather, to stations, for example, like in South America, such as we did with Rio, and we intend to printerize the BA circuit. We are doing it to Lima on frequency shift, and other points, trying to get the correspondents interested in going to frequency shift, and where advisable we shall make the change.

Q. As an engineer, Mr. Scholz, is it your opinion that printer circuits are superior to Morse circuits? Is that the reason there is an attempt to convert these Morse circuits to printer circuits? A. I think that there are several factors involved in that. There is a definite advantage in the operation of a circuit to use frequency shift keying. The question of whether or not a circuit should be printerized or whether it should be operated on a Morse basis, will depend upon certain factors, but the main advantage from the idea of printer operation is,

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first, if the system is used extensively, it perhaps facilitates the handling or automatic relaying of traffic, but the main advantage is obtained where the circuits, the operations can be carried on with perhaps less skilled personnel, than required for Morse operations.

[1229] By Mr. Hawkins:

Q. Do you have any printer equipment in Madrid at the present time? A. No. Printer equipment, you mean just printer equipment, or the frequency shift and associated equipment?

Q. I asked about printer equipment. A. I have a feeling that there is printer equipment in Madrid, but as far as the equipment for keying is concerned; well, I would say no.

Q. You have sent none there for the specific purpose of putting the circuit on a printer? A. No.

Q. That's true also of frequency shift apparatus? A. Yes, we have not sent anything.

Q. Have you set any aside for that purpose? A. I mentioned to Mr. Werner that we are accumulating and building up a stock of that equipment to be able to offer to correspondents and our stations that we want to put on frequency shift operation.

Q. Those units are generally earmarked for some particular circuit, are they not? A. No.

Q. You just maintain a supply? A. I mean certain of the units might be allocated for a certain circuit, but there is always an overage of equipment. **[1230]** ment for general use of this kind.

Q. Now suppose that Madrid wants to work on a Morse basis, that means that Lisbon will have to remain on a Morse basis, does it not? A. That's right.

Q. It is true, is it not, that if you want to work Madrid on a printer basis, or, rather, Lisbon on a printer basis, and Madrid on a Morse basis, then you would require an

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additional complement of frequencies, transmitters? A. But we wouldn't do that.

[1232] During the eleven-year sun-spot cycle with which you are familiar, how many frequencies will be required to operate a radiotelegraph circuit? A. You mean east and west circuit?

Q. Take an east and west circuit first, yes. A. For 24-hour operation, I would say throughout the eleven-year cycle that you may have from a minimum of three and possibly five.

Q. Is it true that most of the frequency experts figure that you have to have available four or five frequencies during that period? A. I presume so, yes.

Q. That's to Europe? A. Yes.

Q. East-west circuit? [1233] A. That's right.

Q. Keeping in mind the fact that you need some, as you say, three, four or five frequencies during this eleven-year period, do you require additional frequencies aside from the two that you have indicated here to operate a circuit? A. No, I do not believe so.

Q. Well, where would you get the other frequencies? A. Well, just as in the transmission conditions on one circuit you require change in frequencies, other circuits will have to have changes, too, so it does not mean that you have to have a complement of five frequencies, let us say, for every circuit that you are operating, because changes made in one circuit will relieve frequencies for use on another circuit.

Q. If you are operating one circuit, you would have to have, say, five frequencies. A. If you were working just one circuit, you would perhaps have four or five frequencies throughout the eleven-year cycle.

Q. You will have to have certain additional frequencies here, which you will have to obtain either from ones now assigned to you, or from additional frequencies? A. Well,

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I mean, just as I was saying, that as the solar cycle changes there is a general shifting around in fre- [1234] quencies, and what is required five years from now is something that is pretty hard to predict.

Q. Do I understand you correctly, then, that as of today it is hard to predict what frequencies you may require in the period ahead? It depends on what conditions are? A. Yes. If the cycle follows the same pattern that it has in the past, the indications are that perhaps you would have to have some different frequencies. We are going through about the sun spot maximum now, I believe, and five years from now, why, some other frequencies may be indicated.

[1238] Q. I think you have indicated that you would operate the Lisbon and Madrid stations on forked basis with simultaneous operations? A. That's right.

Q. To the extent you are using the facilities to communicate with Lisbon—of course, you couldn't use them to communicate with Madrid, you cannot send messages to both [1239] places at the same time? A. No, you have to, but each end takes off the messages that are indicated for their particular point.

Q. So what you do is, you send all the messages going to Portugal, you send them also to Madrid? A. You can't do otherwise.

Q. And to the extent that you send messages to Madrid, to the extent that you send Lisbon messages to Madrid, you cannot send Madrid messages? A. That's right. That is one of the fundamentals, obvious things of a forked service.

Q. One of the fundamental disadvantages? A. I wouldn't say it is a disadvantage. It must necessarily be you want to operate a forked service.

Q. Suppose you should receive, say, from the State Department, a series of important messages destined to Madrid, several messages of an important nature, and at the same time you should receive a number of important

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messages from the War Department to Lisbon. You are going to hold up one of the two, are you not? A. That's correct.

Q. Do you know what the method of operation proposed by the company in Lisbon with you is? Do you know whether or not they propose a forked method of operation with the [1240] United States? A. Yes, I believe they did. In fact, I believe that is the way Lisbon circuit was operated, was forked with RCA and ourselves.

By Mr. Werner:

Q. Does that mean that both you and RCA receive the very same messages simultaneously, or was it on a scheduled basis—a time schedule? A. No, on a forked basis, when Lisbon is operating on a forked basis with Mackay and RCA, the traffic is transmitted in the order in which it is placed in front of the operator, and the receiving company is indicated, whether it is Mackay or RCA. We are getting traffic as far as our recording is concerned that is going to RCA, and RCA is getting messages that are going to us. And we take the message that is indicated for us, and RCA takes the message that is indicated for them. You can't do otherwise, unless you go to a scheduled basis of operation, and that is not going to preclude one company from not listening while the distant station is transmitting to the other company. It is just one of those things. The same way as intercepting any signals that are on the air.

By Mr. Hawkins:

Q. Let us go on a little way. The Portuguese companies working with both RCA and Mackay, means all the messages come in to the Mackay office, all the messages come in to the RCA [1241] office, right? A. Yes, it is possible that they do.

Q. If it is a simultaneous forked operation, that would be true, would it not? A. That's right.

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Q. Let us take the operator at the Mackay receiving position. He has to sit there and scan all those messages, to pick out the ones that Mackay is supposed to deliver?

A. The indicators, only.

Q. I mean that requires a constant following of the circuit so that he will be sure not to miss any messages. That's right, he might do it from the tape, or he may do it orally.

Q. So, now, going across the street to the RCA office, the same thing would have to be done? A. That's correct.

Q. So that, then, each of those operators would have to handle maybe twice as many messages as he would ordinarily be required to handle? A. No, that's not correct.

Q. At least he will have to follow that much tape. A. That is not correct, either, because he may not even be recording the signal, and listening to the call from Lisbon for his particular station.

Q. Is it true, then, that Lisbon would send to Mackay, [1242] say, for about 30 minutes; and then call RCA and sent RCA for about 30 minutes? A. No; that is the scheduled method of operation, if you want to put it that way, but a forked basis means that the operator is handling the traffic that is placed before him in the order that it is placed before him. You might have one message going to Mackay, the second message might be RCA, he may have in front of him messages for RCA, and none for Mackay, and he might have no messages at all.

Q. In any event, you would have an operator in each position matching each message as it comes in, and he has to there decide whether or not he should copy it or let it go? A. That's correct.

Q. So all the Mackay traffic goes into the office of RCA, and the RCA traffic goes through the Mackay office? A. When you say traffic, I do not think you mean what you say. The signals are there, that is true, but the traffic not necessarily. Traffic is one thing. The signals are there,

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but it is not transcribed unless it is intended to be transcribed.

Q. Does it come in on a piece of tape from which it is transcribed? A. Yes.

Q. The tape comes in? A. The tape is in the office, and the signals come in [1243] and are recorded on the slip. But they don't have to be.

Q. Back to the Portuguese side again, as far as the operation over there is concerned, they just send the traffic to the United States? A. That is correct.

Q. So that in so far as service in Portugal is concerned, there would be no difference? A. From Portugal?

Q. Within Portugal itself? A. No, I don't believe so.

Q. So that there could be no improvement in service from Portugal? A. As far as the Portuguese end is concerned.

Q. They just put it on the transmitter and send it? A. That's right. I wouldn't say the same thing for the New York end.

By Mr. Werner:

Q. What did you mean by that, you wouldn't say the same thing of the New York end? A. As far as carrying traffic from Portugal is concerned, after the message is transmitted and acknowledged, there is no difference in so far as the New York end of the circuit is concerned. But there must be some handling beyond, or delivery to New York, or to some place beyond New York.

Well, now, maybe RCA has facilities or methods that [1244] might facilitate the handling of that message better than Mackay. On the other hand, Mackay may have some facilities that may be better to handle the messages. But so far as the Portuguese end is concerned, once the message is cleared from the Portuguese end, it is finished, but as far as the message getting here, it would depend on what facilities the two companies have, whether there was advantage

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in one or the other, or whether they are equal, as far as the treatment of the traffic after it has landed in New York is concerned.

[1262] Q. I think at the close of the session we were discussing the Netherlands. What facilities did you make available at Brentwood to communicate with the Netherlands during the period of time that you had temporary authorization? A. You mean as to frequencies or just other facilities?

Q. Primarily in plant and transmitters. A. A transmitter was arranged for the frequencies that were decided upon for operation with Amsterdam. For antenna facilities the use of the technique of adding these frequencies to existing antennas for simultaneous operation of the two transmitters on the antenna is how we provided the antenna facilities.

At the receiving end we have groups of antennas in the general direction of the European points and add receivers to those antennas as required.

Q. Did you provide a new transmitter? A. No.

Q. You contemplated using an existing transmitter? A. That is right.

Q. How is that transmitter being used at the present time. [1263] A. I can't say.

Q. Can you give any indication? A. I can say this, that as far as the Brentwood station is concerned we have a number of transmitters and these transmitters can be arranged to be lined up on various frequencies. There are a certain amount of facilities at a station such as Brentwood which you can press into service as required.

There is not a transmitter available for every circuit and exclusively for that circuit, and there is in the station some extra facilities that can be used for various purposes. So it wouldn't necessarily mean that the addition of one circuit to the operation would require providing complete new facilities for it.

Carl E. Scholz, for Intervenor—Cross.

Q. To the extent that you added additional circuits, however, you would soon reach the point where you would have to supply new equipment? A. That is correct. And that is why at the moment we have under construction these twelve 20/30 kilowatt transmitters in order to provide additional facilities at the Brentwood station, and to relieve certain congestion on existing transmitters from the standpoint of frequencies or the necessity of retuning a transmitter when you change frequencies.

Q. So it is true that a new plant will have to be [1264] provided or will be provided for this service. A. It is not required for this particular service, and I have so testified.

As far as the establishment of a circuit to Amsterdam, a direct circuit from New York, we are prepared to operate that circuit at the moment with the facilities that exist at the present time. In fact they were originally provided and arranged for when the temporary authorization was given.

That doesn't mean that if, for various reasons, additional facilities or additional transmitters are required to facilitate or improve operations, that it will not be done. And that is what we intend to do.

Q. While you could provide the service it will not be as efficient as it might be after you added this plant. A. I wouldn't say that. It might make it a little bit simpler from the standpoint of operation to have additional facilities. But it does not affect the efficiency of the operation of the circuit.

Q. Not all of the 12 new transmitters will go to Brentwood. Is that true? A. That is correct.

[1267] Q. On page 204 of the record, lines 21 and 22, you indicated that you would use for communication with Holland a frequency in the 18 megacycle band, one in the ten megacycle. Is it true that you would use the 18 megacycle frequency earlier in the day? A. Yes.

Carl E. Scholz, for Intervenor—Cross.

Q. For about what period? A. I would say that—let's say from perhaps 6 or 7 o'clock in the morning until perhaps maybe 6 o'clock at night. Something like that.

Q. When would you use the 10 megacycle frequency? A. There is perhaps a period at night when the higher frequency starts to fail and then the 10 megacycle frequency is started. It will start around 6 or 7 o'clock, until after midnight.

Q. There is a transition period between the two, is there not? [1268] A. Between the time—

Q. Between the two frequencies? A. That is right.

Q. Is it also true that at this phase of the solar cycle there is a gap between the two? A. No. I don't think so. That is a condition that may vary; but, for example, on the circuit that we are operating with Madrid we cover the 16 or 18 hours with two frequencies, and during the time that one frequency becomes a little shaky, as we put it, then the second frequency is dualled with it, so that the two frequencies are running for a period of time and with advice from the receiving station that the lower frequency is becoming solid the higher frequency is shut down.

Q. That time when the first frequency becomes a little shaky comes before the second frequency becomes solid. Isn't that true. A. Well, yes.

Q. There is a period of time in there when it would be kind of difficult—A. It is not a sharp difference. In other words, the transition period extends over a certain period of time. It might be an hour, for example. In which both frequencies are still satisfactory. But anticipating that one frequency will become unusable and not knowing [1269] the exact time you operate on the two frequencies and the receiving end receives both frequencies and then takes the one which gives them the most satisfactory service. That is a practice that is followed, I think, in all communication companies.

Q. You would probably provide a better service if you had a third frequency that you could use in that transition

Carl E. Scholz, for Intervenor—Cross.

period between the time you jumped from the 18 megacycle frequency down to the 10. A. No. I don't believe so. I think that actually during the transition period of that kind I don't believe that a third frequency is normally required for that short period.

Q. How about the present phase solar cycle? A. The present phase of the solar cycle?

Q. Yes. A. As I said, I believe that our experience has been on these European circuits that we operate throughout the whole schedule with just the two frequencies.

Q. If you had all the frequencies that you wanted, if you could get all the frequencies that you requested, you would probably use a different frequency during that transition period, wouldn't you? A. I don't think our operating experience has indicated that it is required.

[1270] Q. If you had it you would use it, would you not? A. Only if it was necessary.

Q. You have indicated now that there is a period in there when you go through a transition period, and if you had another frequency to use there you would avoid these difficulties that you have in passing through that transition period. A. No. The transition period doesn't require the necessity of a third frequency. It is a period that changes from the high frequency to a frequency that might be lower. The circuit conditions going bad from, let's say 18 megacycles to 10 megacycles is not a change that takes place abruptly, and it doesn't mean that you have to have a third frequency between the high frequency and let's say the 10 megacycle frequency in order to cover the transition period.

The transition period is the period in which you go from the high frequency to the next frequency. There is no need for a third frequency in between.

That transition takes place over a period of time.

Let's say it would be a matter of an hour. There is a period in that hour when both frequencies are satisfactorily received.

Carl E. Scholz, for Intervenor—Cross.

Q. You have made some reference to your Madrid circuit [1271] which is considerably south. What has been your experience in this respect on the circuit with Denmark? A. Considerably south of what?

Q. Amsterdam. A. I don't know that it is so much south of Amsterdam.

Q. What is your experience with respect to the Denmark circuit in this respect? A. I think it is the same.

Q. Do you have a high frequency in the morning, around 18 megacycles which you can use until the 10 megacycle frequency comes into use? A. I think so. Yes. I don't happen to know offhand the frequencies that are allocated to those circuits at the moment, but I would expect that there would be two frequencies, one in the high frequency, let's say above 15 megacycles, and one below 15 megacycles—9 or 10 in there—that would be used on the Denmark circuit.

Q. Do you have the frequencies that you are now using to Denmark? A. No. I haven't them here.

Q. Is it reasonable to assume that there is less of a gap there in the two frequencies than you propose to use for Holland? A. You mean during—

[1272] Q. I mean if there is less than 8 megacycles difference. A. Between the frequencies that are usable to Madrid as compared with Denmark?

Q. No. The two frequencies that you use to Denmark, do you know what those frequencies are? A. I don't. I might be able to ferret it out of information that I have, but I don't have it immediately available.

Q. Would you make that information available at such time as you have a chance to? A. You would like to know the frequencies that we use on the circuit between New York and Denmark?

Q. Yes. I think you indicated that the 18 megacycle frequency is also used from San Francisco to Manila. A. No. It is used from Manila to San Francisco.

Carl E. Scholz, for Intervenor—Cross.

Q. From Manila to San Francisco? Now, is it not true that during a certain period of time that frequency will have to be withheld from one of the circuits in order to escape interference? A. No. I don't believe so.

Q. Won't your transmission from Manilla on the same frequency interfere with the transmission from New York on the same frequency? [1273] A. From New York to Amsterdam?

Q. Yes. A. First of all I would say no, but also there is considerable time differential between Manila and New York, for example. Something like 12 hours difference.

Q. If you tried to use the frequency from San Francisco to Manila that would be true, would it not? A. From San Francisco to Manila?

Q. Yes. A. But we are not using the frequency from San Francisco. It is the frequency used at Manila to San Francisco.

Q. I understand that. But if you tried to use it from San Francisco to Manila there would be interference. A. Not necessarily. For the reason that the difference in paths, the direction of transmission, for example, from San Francisco to Manila, working westward, and from New York to Amsterdam working east, and the fact that you have antennas that discriminate against back radiation.

Q. Is that true during the entire time of use? Isn't it true that at certain periods there will be some interference there? A. Periods—

Q. During the entire period of use, is that true? A. That there won't be interference?

Q. That there will be interference. [1274] A. That there will be interference?

Q. Yes. A. That is possible. But also there must be certain discrimination against that at the receiving facilities.

Q. Do you, at the present time, use the 18 megacycle frequency anywhere else? A. This 18140?

Q. Yes. A. As far as I know, no.

Carl E. Scholz, for Intervenor—Cross.

Q. Have you ever used it elsewhere? A. I wouldn't say that we have or we haven't because I don't know.

Q. Could it be used elsewhere? A. I believe that it could. That is what we are preparing to do in the use of this frequency from New York to Amsterdam, while we are using the frequency from Manila to San Francisco. It is one of the cases which we believe that you can satisfactorily operate or use that frequency on the two circuits and get more extensive use out of the frequency that we have. That is done in many cases.

We are actually doing it on the frequency 15535. It is being used from San Francisco west. At the same time we are using it from New York eastward to Madrid. It is the same situation.

[1275] Q. Assuming that you should lose some of your frequencies as a result of some of the conferences now going on, with which I believe you are familiar, it is possible that you could take this 18 megacycle frequency and use it to some one of your existing circuits in Europe. Is that not true? A. No. That, of course, depends upon if you are speaking of the frequency allocation plan that is being worked out by the PFB. Now, what they are going to do with reference to where they will allocate certain frequencies is something that I don't think anyone knows at the moment. But 18140, the frequency in question here, as I understand the situation, is now licensed to Mackay—I can't be sure of that. I was going to say that I wasn't sure it was licensed to Mackay here. But I think that it is.

We are asking the Commission to make that frequency available on the east coast for this service.

Q. That frequency you say is not at the present time licensed to Mackay? A. I am not sure. I think it has been. Yes, the Commission has authorized the use of 18140 at Brentwood. And I believe it was done in connection with the proposed establishment of the direct circuit from New York to Amsterdam.

Carl E. Scholz, for Intervenor—Cross.

Q. I see. It was given for this purpose, the purpose [1276] of the New York-Amsterdam circuit? A. I don't know whether it was specifically done for that circuit. But I think the Commission has authorized the use of that frequency among the other frequencies assigned to Mackay in the east coast here.

Q. So if you had not been authorized to establish the Amsterdam circuit there would be no need to use that frequency on the east coast. A. I wouldn't say that. I think any frequencies that are assigned under the present conditions have use. When interference comes up on certain frequencies normally used interference can be avoided by changing to another frequency. That is being done right along.

Q. You have just said that this frequency was authorized to you in connection with the proposed circuit to Amsterdam.

Mr. Werner: Are you sure about that fact? Those frequencies are not tied down to any circuit at this point, are they?

The Witness: No, they are not. That was my point. As the group of frequencies licensed to Mackay, for example, for the use of the Brentwood station, they are not restricted as to the particular circuit on which the frequency is to be used. I think that we can use certain frequencies whether to South America or to Europe.

[1277] There are certain frequencies licensed on both coasts and some are restricted from being used on one coast or the other.

By Mr. Hawkins:

Q. Do you know when this frequency was licensed at Brentwood? A. No, I don't.

Q. Would you check that and furnish that information? A. Yes.

Carl E. Scholz, for Intervenor—Cross.

Q. Now, the 10 megacycle frequency that you referred to, that has for some time been licensed for use on the west coast. Is that true? A. I can't say without referring to the sheet in here, whether that frequency is licensed on the west coast or not, nor how long it has been licensed to Mackay for either point.

Q. Perhaps if you refer to page 206 it will refresh your recollection. A. That is right.

Q. So that frequency is licensed to Mackay at the west coast? A. San Francisco; that is right.

Q. And it is used from San Francisco to Manila? A. That is right.

Q. Is that frequency now licensed at Brentwood? [1278] A. Yes.

Q. When was it so licensed? A. I can't say.

Q. Could you also get that information?

(No response.)

Q. Now, you have indicated in connection with the 18 megacycle frequency that if it were used from San Francisco to Manila, and also used simultaneously from New York to Amsterdam there would be times when there might be some interference. A. That is possible.

Q. The same would be true of the 10 megacycle frequency. Isn't that true? A. That is possible.

Q. The difference is that you actually use the 10 megacycle frequency from San Francisco. A. That is right.

Q. So that the case of interference might be more serious there. A. Not necessarily, because of the discrimination against back radiation.

Q. But there is that possibility during certain periods. A. Possibly. I think it is rather remote. The fact is that we think that the use of these frequencies [1279] or similar frequencies under these same conditions is perfectly practical. The fact is I know that it is being done by you people.

Q. There are limitations as to the extent to which you can do it throughout the period of useful time of fre-

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quencies. A. That is correct. And the directions and power and type of antenna, the type of receiving antenna, and the type of signaling that you are using the frequencies on. Many factors enter into it. But this is entirely a practical operating setup.

[1280] By Mr. Hawkins:

Q. As the solar cycle changes you will need different frequencies than these two for communication with Amsterdam. A. That is correct. That will perhaps affect the frequencies allocated to a good many circuits.

Q. When do you expect conditions will change so that you will require different frequencies? A. I think that if the same pattern is followed as in the past with the change in the 11-year solar cycle that at the present time we are just going past, I believe, the maximum period and that would be in 5-5½ years. However, there have been indications that this next period is not [1281] going to follow, according to propagation experts, follow the same trend as the past periods have. So it is perhaps anybody's guess as to when the period of minimum solar activity is going to get into the picture.

It is one of those things that doesn't change quickly. It is over a period of time. I might like to say something about this question of use of frequencies and the inference that you perhaps made that we might be required to use frequencies other than the two indicated. That is perfectly true. But with the group of frequencies that the communication companies have to give service to various circuits, and as the conditions change due to solar activity, it means a reshuffling of the frequencies to the various services, and it is quite true that within the next five years you perhaps will find that these frequencies may not be entirely suitable.

But that is a process that has been followed by the communications companies, not only by Mackay, but others

Carl E. Scholz, for Intervenor—Cross.

throughout all of these periods in which they reassign frequencies at their disposal to various services.

Q. Were you here during Mr. Stockton's testimony? A. Yes.

Q. Do you recall his testimony to the effect that the AC&R system proposes to duplicate every circuit that RCA has? [1282] A. Yes.

Q. How would that affect your frequency requirements? A. In all probability it will require additional frequencies, or the greater use and sharing of the frequencies that are now assigned to Mackay. I think both are possible. One, that you can make more extensive use of frequencies which you have with the possibility that there will be improved techniques, and the second thing is that you may have to have additional frequencies if you want to duplicate circuits to all of the points that RCA is serving.

Q. It is your testimony that you would require a number of additional frequencies. A. How many I don't know. But I would say as a general statement that additional frequencies will be required.

Q. Have you any idea as to the number that might be required? A. No.

[1287] Q. From Tangiers do you propose a forked operation or an independent? A. An independent circuit.

Q. So that that will require a transmitter? A. The transmitter is there.

Q. Do you have antennas directed on Amsterdam at the present time? A. Yes.

Q. When were those erected? A. Either the very end of last year, or the early part of this year. They were made—those facilities were made available at the time that it was indicated by the Dutch that they would be willing to establish a circuit with Tangiers and at that time we provided—erected the antenna at Tangier for that circuit.

Carl E. Scholz, for Intervenor—Cross.

[1288] Q. On the same page you have indicated that the State Department had authorized the use of frequencies 17520 and 6840, from Tangiers. A. That is correct.

Q. Those are the frequencies to which you made reference a few minutes ago that have been authorized? A. By the State Department?

Q. Yes. [1289] A. That is correct.

Q. When were those frequencies authorized to you? A. Those frequencies, as I recall, were frequencies authorized for use at Tangier some time between the establishment of the Tangiers station and some subsequent date. What date, I don't know.

Q. It is true, is it not, the State Department in authorizing the use of frequencies from Tangiers authorizes those frequencies only to a certain point, a certain country? A. No. The arrangement with reference to the assignment or use of frequencies at Tangiers which is by the State Department is that you may have a frequency at Tangiers, let's say for use between Tangiers and Addis Ababa, which is in a certain direction. That frequency may be restricted for use on that circuit alone.

Before that frequency can be used in another direction permission or authorization, approval, I guess you would call it, has to be obtained from the State Department. What the State Department does, they take the matter up with the FCC, Iraq, and the joint commissions in the zones at which you intend to communicate, and get an expression from them as to whether or not the use of that frequency in the anticipated direction would cause any interference to any of the services that are being given by these various agencies. [1290] and if the opinion is that it would not then that frequency is authorized for use in that general area, or they prefer to put it on the basis of points, restricted areas.

In other words, you wouldn't say northern Europe. They would say use it to Germany or Holland.

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Q. Then I return to my original question. It is true, is it not, that in getting authorizations from the State Department, you must get authorization to communicate with the specific point? A. Yes. Or to a restricted area in a certain direction. For example, it might be, for example, to Holland or Belgium.

Q. They would both be mentioned then? A. They would both be mentioned.

Q. As you have indicated that is because there might be some interference to some other service using that frequency in that particular area. A. That is right.

Q. To the extent that Mackay might be authorized to use either of these frequencies from Tangiers to Amsterdam that would preclude the use in that general area by any other service. A. Of these same frequencies?

Q. Yes. [1291] A. That is correct. Yes.

Q. You do not have authorization from the State Department to use these two frequencies at the present time, do you? A. Yes, I believe we have clearance from the State Department for use of these two frequencies to Amsterdam.

Q. Didn't your testimony indicate that that authorization was withdrawn? A. That is correct, Mr. Hawkins. I was speaking of the time that the authorization was given. Since that time it was not renewed, pending the outcome of this hearing. They were authorized for use for a limited period and then when that period expired and we asked for a renewal of it it was withdrawn pending the outcome of this hearing. That is correct.

Q. So that if your application should be granted to communicate via Tangiers you will have to go back to the State Department and get frequencies for the purpose. A. We would have to get the State Department to authorize, whether it is these frequencies—by that time if for some reason they can't be used we would have to seek other frequencies.

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Q. It may be that these frequencies will have been assigned to some other service for some other use. A. That is quite possible. It depends entirely [1292] upon what has happened from the time that the authorization was withdrawn until a decision is made in this case.

[1293] Q. Does Mackay propose to provide any radio photo-service to Holland? [1294] A. Yes. If the Dutch want that type of service we are prepared to give it to them.

Q. Do you have equipment now? A. Yes.

Q. Where is it located? A. Which part of the equipment are you speaking of? The transmitter is at Brentwood. The actual photo terminal equipment is at 67 Broad. The receivers are at Southampton.

Q. Is any of that equipment now in use? A. Yes.

[1313] Q. What expense, Mr. Scholz, was incurred in connection with the opening of the circuit to Portugal last winter, if there was any expense? A. There were some expenses, but not of any great magnitude.

Q. I believe you testified that the Portuguese circuit could be opened with no additional expense; is that right? A. That is right.

Q. Isn't it true that whenever you operate a circuit which you haven't operated before, that there is expense incurred in the operation of the circuit? For example, don't you have to maintain a separate receiver for that circuit? A. Yes.

Q. Wouldn't you have to have personnel to man your receiver? A. No. The addition of one or two or three receivers presents no problem from the standpoint of personnel. As you know, where we have a station such as at Southampton there might be 30 or 40 receivers in there. Those receivers are maintained and adjusted, started and

Carl E. Scholz, for Intervenor—Cross.

stopped, and so on and so forth, by perhaps two people, or three people, on duty at one time.

[1321] A. Correct.

Q. Now, if your applications are granted and the equipment which is now held in reserve becomes utilized, is it not fair to say that you will then go and build up your reserve again to the point at which it was prior to the time at which you utilized these facilities, Mr. Scholz? A. I think that is a correct statement, and it may not be throughout all items of equipment. It may be that we feel we should have additional exciters, for example, or additional receivers, or what have you, but it is not possible, or not advisable—let's put it that way—for a communications system such as ours—or any of these communications companies—to provide facilities only, and limited only to the particular circuits that they have in operation.

They must have some reserve plants. Now it is a question as to how far you go and how far you dig into your reserve before you consider it necessary to replace that reserve.

Q. Do you consider the reserve which you have at the present time excessive or adequate? A. I would say that it is neither.

Q. Which is it? A. I think it is adequate, let's say, but it is not [1322] excessive.

I would go further to say that, if we had to establish circuits to these three points in here, I believe that we would want to provide some additional reserve plant.

Q. Then to the extent, Mr. Scholz, that you do provide additional reserve plant, isn't it a fair conclusion that the operation of the proposed circuits would entail a cost to Mackay, to the extent that it would have to replace its reserve plant? A. Yes. I would say that is a fair statement.

Carl E. Scholz, for Intervenor—Cross.

By Mr. Hawkins:

Q. To the extent that your number of circuits are increased, you have to maintain a larger reserve, do you not—a reserve of equipment—because, as the number of circuits gradually increase, you require more reserve equipment? A. Yes, I believe that is correct.

[1341] Q. How do you propose to operate to Holland via Tangiers, assuming the Commission were to grant your application to communicate with Holland via Tangiers? A. At the present time we are operating a printer circuit between New York and Tangiers. If a circuit was established, as was planned, between Tangiers and Amsterdam, it would be, and it was agreed by the Dutch, it would be on a five-unit printer basis. Therefore, traffic that would go to Amsterdam via Tangiers would be included along with the other traffic on the New York [1342] Tangiers circuit.

Q. Such as the Moscow circuit? A. Such as the Moscow.

Going further into this program, that—

Q. You tell me what would actually be done. What are your plans? A. That is the way we would initially operate with Tangiers, the same way as we are operating with Moscow at the present time.

Q. And it is a tape relay? A. Yes.

Q. Semi-automatic operation? A. That is right.

Q. And you are prepared now in Tangiers to institute such an operation? A. That is correct.

Q. And as far as you know, the Netherlands authorities are prepared to receive on such an operation? A. As far as I know, they have, because we have actually exchanged messages on a test basis with them before the circuit was closed down.

Carl E. Scholz, for Intervenor—Cross.

[1343] By Mr. Werner:

[1349] Q. In answer to a question asked of you by Mr. Hawkins in connection with the use of an 18 megacycle frequency simultaneously from Manila to the United States, and from New York to the Netherlands, you stated that you didn't think any interference could arise if those frequencies were used simultaneously from those two points, namely, Manila and New York. Is that correct? A. I won't say that there would never be any interference, but—

Q. Isn't it possible that if you were transmitting on one frequency from Manila to the United States and transmitting on the same frequency from the United States to the Netherlands, that the Netherlands might very well receive that transmission from Manila, and there might be interference caused with those two transmitters? A. It is possible, yes.

Q. How likely is it? **[1350]** A. I think it is rather remote, providing the proper technique is employed at the ends of the circuit to minimize it.

Q. Would you say that it is possible for one day a month that you might have such interference? A. Yes, I think it is possible, perhaps for only a limited period of time.

Q. Is it your testimony, Mr. Scholz, that over the 11-year sun spot cycle you would only need two frequencies to operate your Netherlands circuit? A. No.

Q. You testified that you are going to use two frequencies, and you gave us the numbers of those frequencies. Do you mean to indicate by that that those are the only two frequencies that you are going to use on the Netherlands circuit? A. No. That is not what I said. It is our opinion that, for example, at this time of the year, at this time of the sun spot activity, that these two frequencies will give satisfactory circuits between New York and Tangiers. However, two years from now, when the sun spot activity changes, it may be that you would want to have two other frequencies.

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Q. Would it be that you would need three frequencies sometime in the sun spot cycle, or four? [1351] A. It is possible, but I don't believe it is, if you can make use of the proper frequency, that is, the proper order of frequency at the particular time.

Q. If you were to operate your Netherlands circuit on a 24-hour basis over a given 11-year period, is it your testimony that at any given time during that 11-year period the maximum of frequencies you would use would be two? A. I believe so, yes.

Q. Is the Netherlands circuit any different from most circuits operated out of New York or San Francisco in connection with the number of frequencies that have to be used? A. I think that the transmission path between New York and Amsterdam is quite different, for example, than the conditions of the path between San Francisco and Manila.

Q. Let me shorten it up this way: Isn't it true Mr. Scholz, that ordinarily to operate any given radio circuit you need a daytime frequency, a night time frequency and a transitional frequency? A. That has been the accepted idea, but there are many circuits that are being operated without having to use three frequencies.

Q. Which frequency do you avoid, the transitional [1352] frequency? A. Yes.

Q. And you think the Netherlands circuit is that kind of a circuit? A. Yes, we believe that it is.

[1354] Commissioner Jones: I notice on page 204 of the record you cite frequencies 18140, 10240 kilocycles and also 6927.5 kilocycles.

In this discussion with reference to two frequencies necessary to operate the circuit to Netherlands, how do you propose to use the third frequency, or is that still under consideration?

The Witness: It could be used, and as time goes along the tendency will be where lower frequencies

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will become indicated. If at the moment you want to operate the circuit at 10 megacycles and later on, as the cycle changes and a lower frequency is indicated, then we have this 68, whatever the frequency is there, available to use in place of one or the other frequencies.

It is the same way that if 18140 should be found to be too high, that in the general shifting of frequencies to the various circuits with the changing of the solar cycle, [1355] then there is no question but what we might be able to make one of the lower frequencies available.

Commissioner Jones: In any event, you only propose to use two frequencies in the Netherlands circuit?

The Witness: That is correct.

By Mr. Hawkins:

Q. How is that frequency 6927 being used at the present time? A. I couldn't say, Mr. Hawkins.

Q. Is it in use? A. I can't say that without referring to the records on the use of frequencies which I haven't got with me.

Q. Would you include that in the information you propose to obtain? A. Yes

[1368] Mr. Werner: I think it is understood, is it not, that the licensee may use any of the frequencies licensed to him on any circuit he wishes unless there is a specific condition on the use of that frequency in his license limiting the use of the frequency to any particular circuit. Those conditions are unusual rather than usual.

I might state that even though an applicant or a licensee proposes to use a particular frequency on a particular circuit, and says so in an application,

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which is acted upon by the Commission, there is no requirement in the Commission's rules which makes it necessary for that licensee to use only that frequency on the circuit.

Our rules permit the use of any of the frequencies licensed to a station to be used on any circuit operated from that station, unless there is a specific prohibition against the use of any particular frequency on a particular circuit, which is an unusual prohibition.

Commissioner Jones: Do you mean by your statement to indicate that even though the request on the testimony has been with reference to 18140 and 10240, that other [1369] frequencies might be used nevertheless?

Mr. Werner: Yes, sir.

[1375] Q: There has been some testimony with regard to the relative merits of printer versus Morse operation. I think there was some testimony specifically with regard to Cairo printer operation.

Will you tell us is it normally possible to operate 100 percent of the time on a printer basis over several circuits? Let's discuss Cairo. A. No.

Q. Why? A. Well, I think that there are times on all regular circuits in which propagation conditions become poor and it is not possible to maintain the reliability, or the degree of performance to give reliable operation on printer.

Q. Again talking about the Cairo circuit, have there been instances where Mackay was ready to work with Cairo by printer but the Cairo correspondent could not at [1376] the moment operate by printer? A. Yes.

Q. Do you have any examples of such instances? A. This is a service message exchanged from the chief at Cairo to Mackay, in which we asked Cairo if he would go to printer, and he replied and said not at the time, since the

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RCA advised at that time that they were not ready to go to printer, and for us to keep on Morse.

I think that is just one of those conditions that come up when circuit conditions change, and it follows particularly in cases where forked operation is involved, and particularly with printer and Morse. It is obvious that both ends of the forked circuit must take the same type of transmission, whether it be Morse or whether it be printer.

It is quite likely that at certain times circuit conditions, let us say, to ourselves would not be such as to make printer operation reliable where, at the same time, it might be that the other carrier could take printer; and the reverse situation could take place.

[1378] Mr. Hawkins: In connection with the point which you are discussing, were both of those messages from the correspondent in Cairo?

The Witness: Yes.

Mr. Hawkins: Mackay and RCA both operate with the same correspondent in Cairo?

The Witness: Yes.

Mr. Hawkins: That is what we referred to here as a "split circuit"?

The Witness: I call it a forked circuit, from Cairo.

Mr. Hawkins: Those difficulties that you just indicated there, indicate some of the disadvantages of [1379] operating what you call a forked circuit. Isn't that true? Some of the operational disadvantages?

The Witness: Yes.

Q. That is, that indicates that RCA was unreading the printer signal from Cairo. Is that true? Is that what [1380] it indicates? A. Yes.

Carl E. Scholz, for Intervenor—Cross.

Q. If you had instead of a forked circuit, a single circuit operating between Cairo and RCA, New York, and the question was whether you could have printer operation, does it appear that the fact that the circuit is forked makes any difference in that case? A. I would say no.

Q. I mean if RCA is not reading the printer signal they can't have a printer circuit, whether the circuit was forked or not? A. That is right.

Q. And similarly, if Mackay were not able, because of conditions, to read a printer signal from Cairo, that fact would be there, whether or not the circuit would be forked. A. That is right.

[1395] Q. Yesterday, as I recall it, you were discussing in your testimony operation from Lisbon to New York, and an operation that contemplates Lisbon forking RCA and Mackay Radio at this end of the circuit. Is that correct? A. Yes.

Q. And your testimony, as I recall it, was to the effect that so far as the Portuguese were concerned it didn't make much difference, in putting the signal on the air and either Mackay or RCA taking it off, accordingly, as it was addressed. Is that correct? A. That is correct.

Q. But traffic, when the signal or message comes into RCA or Mackay, thereafter you deal with the message, for example, if you transfer it to Western Union, I asked you if it were not possible that one company might get it over to Western Union faster than the other. I now call your attention to Exhibit 196, and ask what that shows with reference to traffic over a 14-day period in December 1947, inbound from Portugal and transferred to Western Union.

[1396] The Witness: Under the heading "Average Minutes [1397] Per Message for Transfer to Western Union", opposite Mackay Radio, 3.8; opposite RCAC, Morse, 6.6 minutes.

Forest L. Henderson, for Intervenor—Cross.

[1403] By Mr. Hawkins:

Q. Is it true that one carrier might be able to operate a printer circuit due to its circuit conditions while the other carrier would not be able to do so? A. Absolutely.

Q. You have a split circuit operation, and a foreign correspondent tries to operate on a printer basis. Then the circuit operating conditions at both the two American carriers will have to be good, otherwise you can't have a **[1404]** printer operation? A. That is correct. But even if you were operating with one it would have to be good.

Q. Yes. But isn't it true that there would be periods of time when one might be able to operate, whereas both would not be able to? A. That is possible, particularly with the geographical separation of the receiving stations, for example.

Q. So in the forked circuit operation, you reduce the time when printer operation might be possible? A. That is possible, yes.

[1413] Whereupon FOREST L. HENDERSON was recalled as a witness for and on behalf of American Cable & Radio Corporation and, having been previously duly sworn, was examined and testified further, as follows:

Cross examination:

[1414] Q. What positions have you held in the past in the I. T. & T.? A. Operating vice-president of the—

Q. I would like for you to begin in 1945, if you can, and go backwards on it, because we have the 1945 positions which you now hold. A. I was operating vice-president of the Commercial Cable Company and the All America Cables, Inc., prior to becoming executive vice president.

Q. Did you at that time hold any position with Mackay? A. Supervisory, yes.

Forest L. Henderson, for Intervenor—Cross.

Q. Did you have a title? A. No. But going back as far as 1931 I was assistant to Mr. Frank Phelan, who was vice-president and director of the International Telephone & Telegraph Corporation, and in such capacity exercised control of the subsidiary communication companies of the I. T. & T., which included Mackay Radio. And as Mr. Phelan's assistant, I did have something to do with Mackay Radio.

Q. What do you mean by "exercised control over subsidiary companies?" To what extent, broadly, did you get into the operating activities of the communications companies? [1415] A. To the extent that I knew generally what they were doing.

Q. But did you participate in the activities of those companies, either commercial activities or engineering activities, or operating activities? A. I participated in discussions on policies as to what they were going to do.

Q. Are all policy decisions of either or any of the communications companies cleared with the I. T. & T. officials? A. No.

Q. You said no? A. But that is going back prior to the time of the formation of the American Cable & Radio Corporation.

Q. Is it fair to say that you did not have close relations with the communications companies at that time from the standpoint of day-to-day operations? A. I had very close relations with them.

Q. You did have? A. Yes, because not only was I traffic manager, but I was special assistant to Mr. Frank Phelan.

Q. You were traffic manager, also? A. Yes.

Q. Of what companies? A. The two cable companies.

[1416] Q. Just the cable companies? A. Yes.

Q. Did you have anything to do with the radio company? I am speaking of Mackay, and not the radio activities of all America. A. In the manner that I mentioned before.

Forest L. Henderson, for Intervenor—Cross:

Q. But not day-to-day contacts? A. Day-to-day contacts, absolutely.

Q. You did have? A. Yes.

Q. In what way? A. In a supervisory capacity and coordinating our traffic activities with those of Mackay. Mackay at that time was on the fifth floor along with the cable companies. We all operated very closely together.

[1427] Q. Now, in 1931, as I understand it, you were traffic supervisor— A. Traffic manager.

Q. —traffic manager of All America and Commercial. You held no position with Mackay, but you were assistant to Mr. Phelan, and he exercised some kind of over-all supervision over the communication companies.

Now, what was your next position? When that status changed, what position did you then hold? [1428] A. You mean, after or before? After that?

Q. ~~That~~ is right. A. I was made operating vice-president.

Q. Of what? A. Of the two cable companies.

Q. And when was that? A. I believe that was in 1943.

Q. So from 1931 to 1943, you were in charge of traffic for the two cable companies, and assistant to Mr. Phelan? And in 1943, then, you assumed the position with the two cable companies. And at that time, did you have any official position with the Mackay company? A. The same as I had previously.

Q. To what extent at that time, in 1943, did you get into the day-to-day activities of Mackay? A. I was an officer of The Commercial Mackay Corporation, and also an officer of the All America Corporation.

Q. What is the Commercial Mackay Corporation? A. Those were two corporations that were formed at the time the A. C. & R. was formed, and the Commercial Mackay Corporation owned the Mackay Radio & Telegraph Company and The Commercial Cable Company, and the All

Forest L. Henderson, for Intervenor—Cross.

America Corporation owned the All American Cables & Radio, Inc., and Sociedad de Anomima Radio, Argentina.

[1431] Mr. Kennedy: That is the reason I wanted to call it to your attention. It is already in the record in this exhibit S. Res. 187. At the bottom of page 260, there is this note:

"Commerical Mackay Corporation and All America [1432] Corporation were merged as of September 30, 1944, with and into the joint parent corporation, American Cable & Radio Corporation, the owner of all the capital stock of each of these companies." I thought at that point it might be well to bring that out.

[1433] Q. Would you list the functions of the companies, the two cable companies, and the Mackay Radio Company, which are handled by the same individual? What individuals in the operating room handle functions relating to traffic of all three compaines? A. Well, the integration is higher up. The traffic managers of the cable company and the Mackay Radio are responsible for routing instructions. The traffic managers get their routing instructions from either myself or Mr. Jorgensen or Mr. Anderson.

[1434] Q. Who makes the decision with respect to any given message as to whether it goes to a point by cable or by radio? A. Instructions are issued to both the Mackay Radio and the Cable companies, and the clerks have those instructions to follow, and they make the routings themselves in accordance with the instructions that are posted on the fifth floor, the operating bulletin board.

Q. Will you continue and tell us the persons in the operating room who perform functions for all three of the companies? A. At the present time, the service supervisors

Forest L. Henderson, for Intervenor—Cross.

[1435] Q. All right. Would you continue and relate the other persons who perform functions for all three companies? A. Employees of the private-wire departments; employees who operate branch office circuits and work in branch offices; employees who work in the routing centers.

[1436] Q. Are there any other individuals who perform functions for all three companies? A. The employees in our commercial department; employees in our engineering department; employees in our legal department; employees in my department.

[1438] By Mr. Margraf:

Q. As I understood your testimony, Mr. Henderson, it is that integration of the activities in the operating room was expedited by the recent strike in the A. C. & R. system, and the import of that, as I gathered— A. I would not say that is absolutely true. We had a lot of integration before the strike.

Q. Isn't it true— A. As a matter of fact, we had more integration before the strike than we had during the strike.

Q. How about since the strike? **[1439]** A. Since the strike—I mean, before the strike terminated—we had, I believe, consolidation of the Mackay Radio service department with the already-consolidated service departments of the two Cable companies. Outside of that, I do not know of any consolidation that has taken place.

Q. As I understood either Mr. Stockton or you to say, it was necessary in order to continue the operation of the company during the strike, to consolidate more and more certain operating functions; is that not a correct statement? A. About all that is left to consolidate there was the service department and the private wire department.

Q. All that was left to consolidate? A. That is about the size of it.

Forest L. Henderson, for Intervenor—Cross.

Q. Is the A. C. & R. system looking to further consolidation of these activities? A. We would like to see a merger of the A. C. & R. companies.

Q. Is A. C. & R. heading toward a merger, in practical effect, if not in corporate structure? A. I think Mr. Stockton testified to that effect, if I recall. He was asked a similar question and replied to it along those lines.

Q. As I understood his testimony, it was that the only thing which prevents a merger of the corporate structures, [1440] as far as he was concerned, is certain difficulties with respect to foreign governments? A. Foreign concessions.

Q. Foreign concession and cable contracts, and things of that kind? A. That is right.

Q. So it is the intent of the A. C. & R. system to merge the operations as a practical matter, of the three companies, even though it may not be possible to merge the corporate structures of these three companies? A. We think we have them pretty well merged as a practical matter at 67 Broad Street now.

Q. And if anything is left to be merged, you feel that process will continue, and in so far as it will be possible from an operating standpoint to do so, the remaining functions will be merged; is that correct? A. Yes.

[1441] Q. I can do it an easier way:

In the May 10th, 1948, issue of Time Magazine there is an advertisement of the I. T. & T. system on page 79. and in the advertisement is this statement, under the heading, "I. T. & T. Communications":

"I. T. & T. is the largest American system of international communications. It includes telephone networks in many countries, 47,000 miles of submarine cable, 6,600 miles of land-line connections, over 60 international radio telegraph circuits, and more than 50 international radio telephone circuits."

Forest L. Henderson, for Intervenor—Cross.

[1442] Is that statement which I read an accurate statement, to the best of your knowledge? A. I do not know who supplied the information. When you asked me for the mileage of the cables, I just roughly in my head—

Q. I have no intent to contradict the figure which you gave. All I would like to know is whether the statement which I read is accurate to the best of your knowledge. A. I think that is probably very close to it. That is talking of the I. T. & T. system?

[1499] Q. Turn, Mr. Henderson, to your testimony with respect to the method of transmitting messages to Holland from New York. This is covered beginning around page 240 of your testimony. You described in some detail, and you have exhibits to show, the cable facilities of the A. C. & R. System for transmitting messages to Holland. Is it your contention, Mr. Henderson, that these cable facilities of the A. C. & R. [1500] Company are capable of handling all the traffic that there is to be handled to Holland? A. I believe either one of the commercial cable channels or the Western Union channel can handle all of the traffic that is now being handled from Holland, including the RCA traffic. I think we could handle the Western Union and the RCA and our own traffic on one channel.

Q. The whole industry. Do you think that either the A. C. & R. cable facilities or the Western Union cable facilities could handle all the traffic that it is reasonable to expect in the future? A. The future is a far-reaching word.

Q. In the foreseeable future. A. For the immediate future, for the next couple of years. I think at the time the RCA got a circuit to Holland, there were plenty of facilities to handle the traffic. It was just a matter of competition.

Q. So you meant no contention that there are not adequate facilities to handle the traffic to Holland, so far as the physical facilities are concerned? A. Pardon me?

Forest L. Henderson, for Intervenor—Cross.

Q. So far as the physical facilities are concerned? A. That is right. But we do not have any facilities to handle traffic direct to Amsterdam.

[1501] A. We are unable to offer a competitive service on our facilities to Amsterdam, because we do not have any facilities to that point.

Q. You make no contention, though, that the present facilities are inadequate to get the messages over to Holland? A. I say the facilities were adequate before RCA went in there.

Q. Now, I believe you testified, Mr. Henderson, that manual reprocessing is involved at London in the handling of New York to Rotterdam traffic; is that right? A. At the present time that is right, yes, sir.

Q. Are there any plans for changing the manual reprocessing to some other method of relay at London? A. Before the war, we have a direct transmission from New York to Rotterdam.

Q. What kind of transmission was that? What kind of relay was involved? A. Direct relay; direct cable and line relay.

Q. Are there plans for reinstituting that service? A. I think we are going to go back to it, yes.

Q. So that that manual reprocessing in London would be eliminated; is that right? A. On traffic handled to Rotterdam.

[1502] Q. Turning to Portugal, Mr. Henderson, are the present cable facilities available for transmission of messages to Portugal also adequate to handle all the traffic to Portugal? A. Yes, but it is an indirect method of transmission. We get much faster time over the direct radio circuit eliminating the manual rehandling of messages that we have to have on Commercial and Mackay messages through the Azores.

Forest L. Henderson, for Intervenor—Cross.

[1537] Q. How about the Netherlands? A. The Netherlands, the Commercial Cable Company would continue to handle traffic to the Netherlands, if we get our circuit to Amsterdam, and if we get our circuit to Portugal, the Commercial Cable Company would continue to handle traffic to Portugal.

Q. Will it handle unrouted traffic to Portugal? A. Via Commercial Cable Company, no.

Q. Only traffic routed via Commercial? A. That is right.

Q. And to Holland, only traffic routed via Commercial, or traffic which goes to Rotterdam? A. Un-routed traffic to Rotterdam.

Q. And all the other traffic to Holland and the Netherlands that is respectively, the traffic of Holland which **[1538]** doesn't go to Rotterdam or traffic which is not routed via Commercial, and with respect to Portugal, all un-routed traffic which Commercial now handles would be diverted from Commercial to Mackay; is that correct? A. That is correct, with the exception of traffic to Portugal which originated in the All America, part of New York that would go over All America's direct circuit in Lima.

Q. How does that diversion from Commercial to Mackay affect the Commercial Cable Company? What benefit is that to the Commercial people? A. What benefit is that to the Commercial Cable Company?

Q. That is right. A. It is a benefit of the AC&R system as a whole to have a good fast direct radio service circuit over which it can handle all of its un-routed traffic on which the customer has not requested a routing via any other route, and over which it can handle all routed traffic from Mackay Radio. I think it is a decided benefit to the AC&R system to have such a facility.

[1540] Mr. Werner: Does that agreement require Commercial Cable to handle traffic?

The Witness: It does, and in the case of Holland, Commercial will handle its routed traffic to Holland

Forest L. Henderson, for Intervenor—Cross.

and its un-routed traffic for Rotterdam over its own facilities because we feel that the service will be better that way than if we send it on the radio circuit, and Commercial directly serves Rotterdam.

• • • • •
[1545] Q. If the direct circuits are granted for Portugal and the Netherlands and Surinam, a substantial amount of the traffic which would go via cable, no longer would go by cable but would go by radio, is that not a fact?

A. That is true.

Q. Is the AC&R system plan to follow that practice regardless of whether the American Communications Industry as a whole would retain less income from the traffic than would be retained if the traffic would continue to be sent over by cable? A. Well, we have followed that practice in the past in some of our direct circuits, the same way that the RCA did when they went into Holland. You have that same problem. You were taking money away from the cable companies who had a percentage of the tolls and giving it to the foreign government. The Western Union followed a similar practice when they opened up via Barbadas in 1921 and took away a lot of the revenue from the All America Cables and gave it to a foreign carrier. All of the communications companies have been following that practice when they saw it suited their best interest.

[1546] We don't think we are doing anything different now than you did when you went into Holland with your circuit in so far as taking business away from the American carriers is concerned. We expect to get business because of that.

Q. Will the traffic be diverted from cable to radio to these points regardless of whether this is done or what it does do to the American communications system as a whole by such diversion? A. We don't think in the over-all analysis that probably we would suffer on that basis.

Q. If you mean by "we" AC&R company, I am not talking about AC&R. I am talking now about the American

Forest L. Henderson, for Intervenor—Cross.

carriers in the aggregate. A. The RCA will lose some business and Western Union will probably lose some business, but what business the RCA loses they are dividing some of that with the foreign carrier now, so it will probably be coming over to our side on the same basis you now handle it.

Q. What business Western Union loses to the AC&R system would perhaps result in a reduction of the amount clearing to the American carriers as a whole? A. The same as it did when you went into Holland.

Q. That is the AC&R plan. RCA didn't accomplish this by diverting this from cables to its radio system. A. When it went into Holland it took traffic away from [1547] the American carriers 100 percent.

Q. As I understand the AC&R system proposes to divert traffic from its cable to its radio system? A. That is right, not a hundred per cent. In the case of Holland and in the case of Portugal, it is not a hundred percent.

Q. I understand that, but to the extent it does occur that policy will occur regardless of the return on the companies in the country as a whole, is that correct? A. That is correct. In so doing, we feel we are giving a better service in the AC&R system.

Q. Mr. Stockton testified that in the AC&R plans to file applications that would duplicate RCA circuits to other points. Suppose that such applications are filed and Mackay is granted circuits to other points duplicating RCA circuits, which are now served by indirect routes by Commercial Cable, will the same pattern of diverting the traffic from Commercial to Mackay be followed that is being proposed for Portugal and the Netherlands? A. Well, every country has a different condition. There will be some diversion, maybe. In some cases there might be a one hundred percent diversion and in other cases there might not. It all depends on what the contractual arrangements the cable company may have in that particular country. I don't know. There may be other factors.

Forest L. Henderson, for Intervenor—Cross.

[1548] Q. Assuming conditions were somewhat analogous to this existing in the Netherlands and Portugal, will it be the plan of AC&R system to divert traffic from the cables to radio? A. Wherever it promotes the best interests of the customers, yes. We feel in the AC&R system that we should have direct circuits to all, certainly all important traffic points.

Q. Now will that pattern then result in the reduction in the over-all amount of traffic carried by Commercial? A. It may in some cases.

Q. It certainly will in Holland and Portugal, won't it?

A. It will in Holland and Portugal, yes.

Q. I see. A. Looking at it from the AC&R system as a whole, it will result in more messages for the AC&R system and will enable us to give a better service as the AC&R system.

Q. My question is directed to the situation with its effect upon cable operation, not the system as a whole. A. We have to look upon the system as a whole when we decide to make these diversions of un-routed traffic.

Q. I am entitled to direct the way the subject is going. A. I understand.

[1549] Q. I am looking at it from the standpoint of the effect upon cables. If the pattern which is proposed for Holland and Portugal is followed in additional countries to which Mackay may be permitted to operate circuits, there will be reduction in the traffic handled by Commercial just as there is reduction in the circuits to Portugal and the Netherlands, isn't that true? A. In similar case, but we will be able to give our customers better service without direct circuits, which we feel is absolutely necessary. We must compete.

Q. What is going to happen to the cable facilities when more and more traffic is taken from the cable facilities and all these people who perform operations for the cable company, a load which you testified to this morning? Will the operations of Commercial Cable get more and more in the

Forest L. Henderson, for Intervenor—Cross.

red as a result of this practice? A. Well, Mr. Margraf, the best way I can answer that question is to call your attention to the fact that Mackay is now operating to a considerable number of countries, heavy traffic countries, now served and formerly served by Commercial Cable Company and Commercial Cable has continued to show an increase and so has Mackay, and in all those countries there is considerable volume of traffic still handled over Commercial Cables. We are giving a better service to the customer by developing both arms of our business, radio and cables.

[1550] Q. We agreed, didn't we, that the traffic handled by cable to Portugal and the Netherlands and Surinam would be reduced to the extent that that traffic diverted over Mackay? A. We did.

Q. And we did agree, didn't we, that that same situation would prevail at other points where Mackay might be awarded circuits and where such a diversion took place? A. Yes, but we have places where Mackay is operating and Commercial Cable gets more of the un-routed traffic than Mackay.

Mr. Werner: Why?

The Witness: Because it happens that that is the way the un-routed traffic comes into the operating room and we also feel we are able to give a better service by handling it that way. In other words, the traffic is divided up between our radio and cable facilities so that we are able to give an equal service on our cable and radio arm at the same time. We don't want the Commercial Cable Company to give all the un-routed traffic, say, to Mackay. We divide that un-routed traffic so we give a faster service all the time. We divide it in a way in our operating room so we get what we feel is the fastest handling.

Forest L. Henderson, for Intervenor—Cross.

By Mr. Margraf:

Q. To the extent there is any diversion from Commercial to Mackay as it would exist in Portugal and the Netherlands and [1551] other points to which Mackay may establish circuits and divert traffic from Commercial to Mackay, what is going to happen to cable operations to those points?

I assume cable will continue to serve those points, but you have people performing operations for cable companies and you have got to retain those people? A. Of course.

Q. Who will pay for those people? A. We have no intention of lessening our cable facilities and operations to the point that you are attempting to outline to me.

Q. Aren't you going to lessen your income to a cable company? A. We haven't so far. The volume of traffic in the Commercial Cable Company is increasing. In 1947 we had more traffic in Commercial Cable Company than we did in 1946 and we had more Mackay radio circuits.

Q. Wouldn't the income be lessened on the Commercial circuits to Holland and the Netherlands? A. It would.

Q. To the extent that there is diversion in the Portugal and Netherlands circuits, Commercial is going to be making less money out of those circuits, isn't it? A. Yes.

Q. And will that practice be followed regardless of [1552] whether such diversion would throw the operation of those circuits in the red on the circuit-by-circuit basis? A. We have been following that practice for several years now.

Q. And Commercial has been losing money for several years? A. Commercial has been handling more traffic than it handled previously. As I pointed out, we handled more in 1947 than in 1946. It isn't the fact that the traffic is going to throw us in the red. It was our increased operating costs and lower rates, which are the two principal factors which put us in the red, higher operating costs and lower rates.

Q. Do you propose to continue the policy of diverting traffic from Commercial to radio operations regardless of

Forest L. Henderson, for Intervenor—Cross.

the effect? A. Our policy is to divide traffic between cable and radio circuits wherever possible in order to promote the best possible service for the customer. That is our practice.

Q. Will you follow the practice which has been proposed for the Netherlands and Portugal without regard to the effect on operating revenues of the Commercial Cable Company? A. Well, if you mean the exact division that we follow, in the Portugal and Holland, no, every country is a different [1553] problem.

Q. Well, my question was with respect to those two countries. A. There is diversion of un-routed traffic to the radio circuit, a hundred percent in proportion, depending upon the conditions and depending upon the service and depending upon contractual relations with the Commercial Cable Company or the All America Cable Company have with the correspondents or connecting company and the point where they transfer traffic.

Q. If Commercial continued to handle the traffic to Portugal and Surinam, and if there were not the diversion which is proposed, isn't it true that Commercial would lose money on its operation of those two circuits, more money than it would lose if there is a diversion of traffic to radio? A. Yes, but the service to the customer would be inferior, and we feel that is the primary interest. We also feel that the AC&R system would benefit more by having a radio circuit.

Q. Who is going to pay for the carrying on of these cable operations on unprofitably? A. We have been able to get along so far.

Q. Doesn't the public ultimately pay for that in the form of rate increases? [1554] A. We have been able to get along so far financially with our cable company operations.

Q. You have some rate increases to help you along? A. Yes, and some of the other companies. They needed them too.

Forest L. Henderson, for Intervenor—Cross.

Q. And if operations continue to be carried on at a loss, and the losses become greater because of the diversion of traffic from cable operations, you will be back for more rate increases, won't you? A. Yes, if that were to be the condition, but I don't believe the condition you speak of is going to arise because of the amount of traffic we divert from cable to radio.

[1558] Q. Well, does it all boil down to this, Mr. Henderson: That if more and more traffic is diverted from Commercial Cable Company, causing that company to operate more and more at [1559] a loss, those losses would have to be made up from the other operations of the A. C. & R. system, or through a rate increase of some kind? A. Any diversions of unrouted traffic that the A. C. & R. make, cable or radio, we feel that is beneficial to the system as a whole. In most cases the radio company still gets considerable more traffic for the system than they lose on the cable side, because we are getting a direct service to those points. We are improving the service to the customer. We are improving the results, we feel, to the A. C. & R. system as a whole, and we are still giving a good service on our reliable cable arm to the points we serve direct. We have a completely integrated radio and cable service, and we can only look at it on that basis.

Q. I want to have one thing perfectly clear in the record, Mr. Henderson. As I understand your testimony, the rates for A. C. & R. traffic are based on A. C. & R. system as a whole, and the rates for Commercial Cable Company are not based in any manner at all on whether or not Commercial Cable makes any money, is that right? A. Well, I think the rates are based to any one particular area, not on the results of the Commercial Cable Company or the Mackay Radio Company or Western Union, or RCA, but the rates to any one particular area in the world are based on the results of all the communications companies, to my knowl-

Forest L. Henderson, for Intervenor—Cross.

edge, in the last year or so. It is not dependent on what the Com- [1560] mercial Cable Company does.

[1569] Q. Mr. Henderson, when did this policy of integration on the A. C. & R. companies originate? A. Oh, it goes back to the time that the I.T.T. acquired control.

Q. I gather from statements made by Mr. Stackton, that the process of intergration have accelerated within the very [1570] recent past. And now, has there been recently more and more tendency to combine the functions of the three companies? A. I would say so, yes.

Q. You would say so? A. Yes. But there has been since the I.T.T. acquired control, a general over-all policy in connection with the operation of the A. C. & R. system, with the idea in mind of doing what was in the best interest of the operating companies that made up the A. C. & R. system.

Q. Do I understand that this process of intergration will be carried farther in the future to the extent it can be?

A. Well, we will do everything we can to further the improvement of the A. C. & R. system along those lines.

[1587] By Mr. Werner:

Q. Is it true that you were informed, Mr. Henderson, that you could have a direct cable connection in Portugal, if you wanted it, rather recently? A. A direct cable connection?

Q. Yes. A. Not to my knowledge.

Q. Were you informed that Radio Marconi, who had the exclusive radio contract with Portugal—although Radio Marconi had this exclusive contract, that all exclusive rights under cable landing concessions were abolished and that the way was open for direct cable connection with Portugal? A. I didn't know anything about the way being open for a direct cable connection—you mean jointly, our facilities with those of cables and wireless?

Forest L. Henderson, for Intervenor—Cross.

Q. Well, were you ever informed that there was a possibility of—that the way was open for a direct cable connection to Portugal if the company wanted it? A. Not to my knowledge.

Q. Were you ever so informed by Mr. McPherson? A. Not to my knowledge.

Q. Do you recall a note from Mr. McPherson in which he indicated the Post Office Department of Portugal had called his attention to the facts I am giving you? A. I don't recall seeing the notes. You mean the Post [1588] Office Department in Portugal as telling us that we could take and have a direct relay through the cable facilities of Cables and Wireless and the Azores?

Q. Do you ever recall a note that was in substantially the following language: "The Post Office Department of Portugal has called to our attention that although Radio Marconi has an exclusive radio contact, all exclusive rights under previous radio concessions have been abolished, and that the way is open for direct cable connection to Portugal should the company desire. Is Commercial Company interested?" Do you recall that? A. I don't recall that, and I don't see how it would be possible in any case, taking into consideration the traffic requirements of Cables and Wireless and ourselves.

Q. I believe such a message was given to you, signed by Mr. McPherson, and the reason I inquired about it is that I am interested in what type of a direct cable connection the note talks about. A. Well, I honestly don't recall it. How long ago was it?

Q. It was subsequent to the time that the Portuguese indicated a willingness to open a direct telegraph circuit. A. I do not recall.

Q. About two years ago? A. I do not recall it.

[1589] Q. I have read the note, and I believe you penciled a reply on the note, to this effect,—and I am asking you to explain. A. Yes.

Forest L. Henderson, for Intervenor—Cross.

Q. "Mr. McPherson: No. We will bank on Vaz Pinto's promise of direct radio circuit." Who is Vaz Pinto? A. He works for Portuguese Marconi.

Q. Do you recall the note and reply? A. No, I honestly don't. But I could have said it.

Q. Well, will you explain— A. I would say I must have said it.

Q. Can you explain the note, and your reply thereto that I have read? A. Well, if I said such a thing, it was my belief that the direct circuit was superior to anything that we could hook up with the cable direct.

Q. Do you recall making any inquiries of Mr. McPherson or anybody else as to what type of direct cable connection Mr. McPherson was talking about in his note? A. No, I didn't pursue the type of direct cable connection we might have made.

Q. You don't recall the note at all? A. I honestly don't, but I could have received the [1590] note, and if I made the reply I must have received the note and must have made the reply. But I will say this: That the two cables that the Commercial Cable Company handles traffic through the Azores are Main 6 and Main 4. I don't see how the Commercial Cable Company, taking into consideration the traffic requirements of our cables, could make any agreement at any time to operate a continuous direct cable circuit at the Azores with either the Ital-Cable or the Cables and Wireless, because our facilities do not permit it. Main 6 is one of our major traffic carrying circuits to London, and we also use Main 4 at times. We also have periods where in the middle of the Atlantic we have cable interruptions, particularly on our Mains 1 and 2 cables.

When those cables are interrupted during the winter months we can not get a ship yard to repair them and they are out all winter. If you are going to hook up a direct cable circuit for such a small volume of traffic as you would handle on it through the Azores and mix up with all of the other traffic we would have to handle, it would interfere

Forest L. Henderson, for Intervenor—Cross.

with the direct operation of those through-circuits to London.

[1592] Q. I asked Mr. Stockton a question which he referred to you, which was this. Is there any attempt on the part of Mackay to obtain All America's customers for countries which both All America and Mackay serve directly? A. Is there any attempt on the part of Mackay?

Q. To solicit All America's customers. A. All of our solicitors go out and solicit business for all of the three companies indiscriminately. That all depends on the approach or the attitude you may get from the customer when you approach him. We may be approaching a customer who is using ICI, and we might go in and try to sell him some Mackay Radio Service.

Q. Well,— A. Or we may find out from our conversation with him that he has some feeling one way or the other as to whether he wants to use cable or radio service, in which case the canvasser, who is qualified in both services, would talk along the corresponding line.

Q. I am trying to determine the amount of competition there is between the three companies in trying to obtain traffic or to go over one or the other on the company's facilities. There is no competition, is there, in connection with the solicitation of traffic? A. Well, our solicitors go out to obtain traffic for the system. And how they determine how to get it from the [1593] customer depends on who the customer is and what his feelings are towards the service. We do have competition. Our two branches of our service—the employees who work in the radio and the employees who work in the cable, compete. They vie with each other all the time to see who can get faster service.

Q. So far as obtaining traffic from the public, the three A. C. and R. companies do not compete with each other for traffic from the public? A. We have a co-ordinated canvassing system.

Forest L. Henderson, for Intervenor—Cross.

Q. As the present time, as I recall, each of the three companies maintains their own customer tie-lines and call boxes, do they not, or have they been consolidated by this time? A. To my knowledge the tie-lines are in the name of one company or the other, but it doesn't mean anything because over those same tie-lines we get business for all three companies, and we go out and canvass for business for all three companies.

[1595] Q. At the present time it is my understanding that all A. C. and R. messages to Holland are handled over the Commercial facilities to Holland? A. That is right.

Q. Now, if you were to receive a message destined to Holland specifically routed via Mackay, would that message also go via Commercial Cable at the present time? A. Yes, in the interest of giving a better service, the best service we have available for the customer over our own facilities.

[1597] Q. If the Mackay application for a circuit to the Netherlands is granted, will Commercial Cable Company handle its own routed traffic destined to Amsterdam? A. Yes.

Q. Well, on the basis of your testimony, wouldn't better service be expected if Mackay handled that message directly to Amsterdam? A. Probably so, but the customer would be aware that Mackay has a service to Amsterdam, and would be aware that CCC has a direct service to Rotterdam, and if he puts the routing by Commercial—

Q. Well, if the customer puts— A. We would probably go and tell him, "Why don't you route it via Mackay where we have a direct service?" That would be our next follow-up with the Commercial Department.

[1598] Today if a customer routed a message via Mackay destined to Amsterdam, presumably he knows that Mackay doesn't have a direct circuit to Amsterdam. Yet on that you would send it via Commercial Cables to Amsterdam? A. Yes, sir, but make—

Forest L. Henderson, for Intervenor—Cross.

Q. On the other hand, if the customer routes the message via Commercial Cable, and that message is destined to Amsterdam, presumably he knows that Commercial Cable hasn't a circuit to Amsterdam and nevertheless he wants it to go by cable. That would be your position in that type of situation? A. Yes, sir, that is right. But then we would go right around and tell him we have a direct circuit to Amsterdam.

Q. And you would attempt to divert that to Mackay? A. In the interest of giving better service on it. It is our purpose to give better service with respect to those points.

Q. With respect to other traffic, traffic that is specifically routed via Commercial Cable—strike that out.

On some circuits, even though a message is routed via one or the other company, you will handle that message via the facilities of one of the companies, although it is not necessarily routed via that company? A. If it has a direct circuit.

Q. But you don't propose to do that in the case of the Netherlands? [1599] A. Well, of course circumstances are different in each one of these countries. Here in the Netherlands you have a circumstance where with A. C. and R. System you have two connections to Holland. We have our own facilities to Rotterdam, and we would have, if that is true, direct radio telegraph circuit to Amsterdam. Now, it is quite conceivable that we would get a message from the customer routed via Commercial Cable going to Amsterdam. In that particular case we do not feel that the service would be as good via Commercial Cable as it would be via direct radio circuit. But we assume that the customer knows that we have both the radio and cable service to Holland, and he has put the routing via Commercial Cable.

Q. And therefore you would handle it via— A. We would; but it would be our business to go around and tell him we have the service and the service is faster.

Forest L. Henderson, for Intervenor—Cross.

[1610] Q. Mr. Henderson, does Commercial Cables solicit vias in Amsterdam or Rotterdam? A. You mean do we have solicitors in Holland?

Q. Yes. A. Yes, we do.

Q. And where are those solicitors located? A. Rotterdam.

Q. Are any of them located in Amsterdam? A. I don't believe we have an agent in Amsterdam, but Mr. McPherson can tell you that.

Q. Have you ever conducted any negotiations with the Netherlands authority looking to leasing of a line between Rotterdam and Amsterdam or setting up a automatic relay between Amsterdam and Rotterdam? A. I believe at one time we had a direct connection between our Rotterdam office and the P. T. T. office in Amsterdam.

Q. What happened to the direct connection? [1611] A. I think we had one pre-war. I don't know whether we have one now or not.

Q. Do you know whether any negotiations have been directed toward instituting such a direction connection? A. I don't believe we have since the war.

Q. I don't recall from your testimony whether Mackay would handle messages outbound to Rotterdam which are routed via Mackay. A. They would.

Q. They would handle their own? A. That is right. Where we have two direct circuits to a country—radio and cable—we respect the customer's routing in this case.

Q. I take it you will attempt to get the customers to route their Rotterdam traffic via Commercial Cable; is that correct? A. Absolutely.

Q. Commercial Cable's traffic for Portugal is handled to the Azores by Commercial Cable facilities and is then turned over to Cable and Wireless at the Azores for transmission to Portugal. A. That is right.

Q. Could that traffic be handled via London, if you wanted to? A. Yes, via London as an alternate route.

[1612] Q. Mackay handles its Portugal traffic via Lima, does it not? A. It does.

Forest L. Henderson, for Intervenor—Cross.

Q. Is that a better handling than is accorded messages handled via Commercial Cable? A. I think it is equally as good.

Q. Why does not Commercial Cable handle all the messages destined to Portugal? A. At the present time?

Q. Yes, sir. A. Because Mackay Radio originates a lot of these messages for Portugal and we have our radio facilities to Portugal via Lima which we can use, and we get back in return for the messages we send to Portugal return messages. So we feel it is in the interest of A. C. & R. system to handle those messages in that manner.

Q. You mean from the standpoint of the amount of money which would accrue? A. That is right, and we feel the service is equally as good. There is only one relay involved in both services.

Q. Who handles the unrouted A. C. & R. traffic to Portugal, which company? A. At the present time?

Q. Yes, sir. A. Mackay Radio.

[1622] Q. Just so that the record may be clear, Mr. Henderson, as to the routing practices within the A. C. & R. system, what is the present A. C. & R. policy with respect to the handling of traffic to points which are served directly by Mackay but which neither Commercial Cable nor All America Cables have direct cable routes? A. Mr. Werner, I would like to just elaborate a little bit on this and give you our general routing policy, which will answer the question you have just asked me, if I may, [1623] please,

Q. All right. A. On unrouted traffic, we handle unrouted traffic over cable and radio on a basis that we feel will give the customer the best possible service at all times and in a manner that will make the best use of A. C. & R. system facilities. On the routed traffic, if a message is specifically routed via Mackay, and we have a direct circuit to the country of destination, we send the message over the direct circuit, unless conditions on the direct circuit prevent such transmission.

Forest L. Henderson, for Intervenor—Cross.

Q. What happens if you have a direct cable circuit to the point also, to the same point? A. Then we get back to the case of Holland—

Q. Let's take London. That is a better case. A. All right. If we have two direct circuits to a country, cable and radio, we will respect the routing over either circuit.

Q. What happens to the unrouted traffic? A. The unrouted traffic is divided in a way that we think makes the best use of the A. C. & R. system facilities.

Q. Do you divide that traffic with any purpose in mind of receiving inbound traffic? A. Yes, to some extent.

Q. To what extent? How much does that enter into the [1624] determination of whether it will go by cable or radio? A. Well, every country has a different situation.

Q. Well, London. A. You asked me with respect to the United Kingdom. The policy we follow on the diversion or handling of A. C. & R. system on unrouted traffic to London or the United Kingdom—all traffic—A. C. & R. unrouted traffic that we get from the Western Union, from points outside of San Francisco, Washington and New York, we transfer to Mackay Radio at New York. All A. C. & R. system unrouted traffic which comes into the Mackay circuit division on the Fifth Floor Branch Office wires and private printer wires, that also goes over the Mackay circuit. All unrouted traffic, A. C. & R. system unrouted traffic, coming into the private wire section where the cable circuits are located and into the private wires on the Fourth Floor and over the Branch Office printer wires on the Fourth Floor, all A. C. & R. system unrouted traffic which we get over the counter at 67 Broad Street, all A. C. & R. which we get in the telephone room, we transfer to CCC.

Q. What kind of A. C. & R. unrouted traffic would you get over the counter? A. Unless the customer writes a routing on it, it is an unrouted message to us.

Q. Even though he uses a Mackay blank? A. Absolutely.

[1625] Q. You consider that an unrouted message? A. That is right.

Forest L. Henderson, for Intervenor—Cross.

Q. Unless the customer actually writes via Mackay Radio? A. That is right. So you will see from that division of unrouted traffic—and taking into consideration that there are many more private wires that terminate in the cable circuit division than there are in the Mackay Radio—that we are in no way neglecting the Commercial Cable Company in the division of A. C. & R. system unrouted traffic to the United Kingdom by giving it to Mackay Radio.

Q. What will happen when you consolidate all your private wires into a joint room? A. When we consolidate all of our private wires and our branch office on the Fourth Floor, it is our intention to maintain more or less the proportionate division of A. C. & R. system unrouted traffic that is now taking place.

Q. Traffic which originates in Washington, San Francisco and New York, unrouted A. C. & R. traffic, I don't recall whether you testified as to which company would handle that traffic. A. Coming up from Washington?

Q. Yes, sir, Washington, San Francisco, New York. A. I think that circuit terminates in the Mackay Radio's circuit division. In that case, it would go on the [1626] Mackay circuit to London if it wasn't routed via cable.

[1636] Q. Now with respect to Spain, Mackay has a direct circuit to Spain; Commercial Cable Company handles its Spanish traffic through the Azores. Now the circuit to Spain, as I recall, is operated 16 hours a day; presumably it operates during all the business hours here in the United States. A. That is right.

Q. Why does Commercial Cable handle its traffic via the Azores? A. Because of its contractual agreement with Ital.

Q. What is the nature of that contractual agreement? A. It provides that the Commercial Cable Company shall handle all of its traffic through the Azores and turn it over [1637] to Ital Cable.

Forest L. Henderson, for Intervenor—Cross.

Q. Do you attempt to get your customers now routing traffic via Commercial Cable to change their routings to Mackay? A. We believe our direct service to Madrid is better than the service via Commercial Cable, and we stress that fact.

Q. That didn't quite answer my question. Are your solicitors instructed to try to get the customers to change their routings to Mackay? Are those part of their instructions, do you know? A. That is getting traffic in the best interest of the A. C. & R. system companies, and they certainly should be doing that.

Q. That is not the question I asked. A. I think they are instructed to do that; I think they are.

Q. Do you know whether they are or not? A. I wouldn't know definitely; but they ought to be and they should be. That is a 100 percent owned system service.

Q. Does Commercial Cable get any unrouted traffic destined for Spain? A. We only have A. C. & R. system unrouted traffic.

Q. Does Commercial Cable handle any of that unrouted [1638] traffic? A. To Spain?

Q. Yes. A. No.

Q. It does not? A. No, because the contract that we have with the Ital Cable provides that the Commercial Cable Company turn over its traffic, and it is the routed traffic.

Q. Is that true with respect to traffic which originates in the cable section of the operating room if it is unrouted?

A. That is true, unless it is marked via Commercial Cable.

Q. They will send it over to the Mackay side. A. That is right.

[1645] Q. At the present time, does Commercial Cable handle any substantial amount of inbound traffic from Amsterdam and points other than Rotterdam? A. The majority of our traffic is from Rotterdam.

Forest L. Henderson, for Intervenor—Cross..

[1652] Q. Well, was there any thought on your part, Mr. Henderson, that there would be better opportunity of getting circuits to one point at issue here if application was made for more than one point at issue?

The Witness: Well, in these particular cases, I believe, Mr. Werner, we had a request from the Portuguese-Marconi for a connection with Mackay, and we also had similar expression of desire from the Dutch. So we just set out to get circuits to these particular points. We will follow up with other countries if we get similar requests for a circuit.

By Mr. Werner:

Q. These requests that you speak about were solicited by Mackay, were they not? A. Not that I know of. I didn't handle any correspondence in connection with that, I don't believe.

Q. Well, it is not your testimony, is it— A. We try to get radio circuits. We will try to get radio circuits with foreign administrations. We will ask for them.

Q. It is not your testimony, is it, Mr. Henderson, that the foreign administrations which operate the foreign ends of the circuits at issue here approached Mackay for the [1653] opening of circuits to the points involved? A. No. I think that Mr. McPherson, I believe, testified with respect to that. We intend to go after all of these administrations for radio circuits.

Q. Well, isn't it true, Mr. Henderson, that you personally requested letters from the foreign administrations indicating a willingness on their part to open up circuits for Mackay? A. I believe I did to Holland. Whether I did to Portugal or not I don't know. Maybe Mr. McPherson handled that.

Forest L. Henderson, for Intervenor—Cross.

[1656] By Mr. Margraf:

Q. In response to a question from Mr. Werner as to why Mackay chose to apply for a circuit to four points for which the applications were originally filed, as I recall your testimony, your testimony was that Mackay was requested by the foreign correspondents, and specifically by Portugal, to establish a circuit. A. I testified that in the end, I had written a letter to the Holland Telegraph Administration requesting a circuit and I stated that I may have also written a similar letter to the Portuguese, or Mr. McPherson may have handled it.

Q. Just to clear that point up, I would like to refer [1657] you to Exhibit 123, which is a letter from Mr. McPherson to Mr. Vaz Pinto, dated October 15, 1946. That letter contains the statement: "Under the circumstances, favorable action upon our petition would be greatly facilitated by a letter from your company to Mackay to the effect that as a result of negotiations commenced several years ago, and the improvement of your position with respect to the availability of the required equipment, you now desire to establish and operate a radio-telegraph circuit with the Mackay radio station in New York for the handling of traffic between Portugal and the United States and points beyond."

Now is it not true, Mr. Henderson, that the reply which Mackay received to that letter is the letter dated January 28, 1947, which is Exhibit Number 123-A, the letter from the Portuguese Company to Mr. McPherson, in which it was stated: "In view of the difficult situation as regards equipment which we have been facing, we have so far been unable to comply with your request to us of some years ago to open a direct circuit with the Mackay station in New York. We now have great pleasure in informing you that as we have present equipment or more available, we are prepared to open in the very near future the direct circuit in question for the purpose of handling traffic with

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the United States and other points beyond the United States."

Now does this exchange of correspondence make it clear [1658] that the request came from Mackay originally to open the Portugal circuit? A. I think it speaks very clearly for itself.

[1683] Q. Mr. Margraf inquired as to the extent of integration of the companies within the AC&R system. At pages 1216 and the following pages of the transcript you indicated that the executive offices, the law, engineering, and commercial departments, all have been consolidated for sometime, and that various phases of the operating functions have been [1684] coordinated and consolidated. Do you wish to amplify your testimony in that connection? A. Yes. In addition to those functions and departments which have been consolidated, we have also consolidated the Comptroller's Department. That includes the message files which are an important adjunct of our operating department.

The Tariff Department has also been consolidated. In fact, we currently file a joint tariff for our companies.

Q. In response to questions by Mr. Margraf, you stated that the routing clerks on the cable side of the operating room handle messages for all three companies, but that there is no allocation of their salaries to Mackay.

Conversely, is it true that routing clerks on the Mackay side of the operating room handle traffic for all three companies without any allocation of their salaries to the two cable companies? A. Yes, that is correct.

[1693] Q. Mr. Henderson, there were a number of questions asked concerning the possibilities of obtaining a direct cable service to Portugal by relay at the Azores.

In order that the record may be entirely clear, will you again state why you believe an electrically direct connec-

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tion at the Azores for Portuguese traffic on a commercial cable system is not feasible? A. Because the Cables and Wireless operate only one cable circuit between the Azores and Portugal. And over this one cable circuit, which is one channel, by the way, must be transmitted traffic of Cables and Wireless, Western Union, and the Commercial Cable Company.

It is impossible for three companies to operate a direct relay into one single circuit or channel on a submarine cable circuit, because of the differences in speed and complications which arise from the fact that the traffic of all three companies must be fed into this single circuit.

Q. If you consider it impossible for the three carriers to feed traffic on a direct relay basis into the single circuit operated by Eastern into Portugal, how do you explain the fact that Western Union considers that it operates directly into Portugal, Spain, Italy, and via a number of other points? [1694] A. In my previous testimony I mentioned that I had some doubt as to certain direct connections described for Western Union.

In the intervening period I have made some investigations regarding that and am prepared now to outline what these investigations show with respect to Western Union's direct operation to Lisbon through the Azores.

Our superintendent at that point, who is intimately acquainted with the operations of all the submarine cable companies, reports that the Western Union uses reperforator tape for retransmission into the Eastern Cable for Portugal traffic, that they also use reperforator tape for retransmission into Italcable, on traffic destined to Spain, and similarly for traffic destined to Italy.

Q. By reperforator tape I mean that the incoming received signal at the Azores from the Western Union Cable is received on a reperforator tape or punched tape automatically and then it is inserted into Eastern's transmitter to go outbound over their cable.

In the western direction, on traffic from Italy, Italcable advises that the traffic at the Azores intended for Western

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Union-New York, is repunched from running slip into the New York circuit.

What he means by that is that the operator on the receiving end of that cable punches manually on a per-[1695] forator the signal coming in off the cable, then the tape from the manual reperforator is fed into the automatic transmitter.

Westbound from Portugal and Spain there is also a retransmission. Cable and Wireless advise that they also use a circuit to Lisbon for their own traffic and, of course, it is also used for the traffic of the Commercial Cable Company.

Should the reperforator tape which is being retransmitted from the Western Union Cable, happen to be passing through the Cable and Wireless transmitter at the Azores, at the time that traffic from our company or Cable and Wireless arrives at the transmitter position for transmission, the tape is stopped at the end of the message—that is, the Western Union message—which is then running through the transmitter and the transmission of our message and those of Cables and Wireless is effected, after which the tape from Western Union is again started through the transmitter.

That is to give proper sequence to the transmission of messages in the order of their time of filing as nearly as possible.

[1696] We are also advised by London that Western Union is working a direct circuit eastward to Amsterdam, but in [1697] the western direction there is a reperforator tape handling at London.

[1712] At pages 1327 through 1330 of the transcript a series of questions was asked you by Mr. Margraf to establish the fact that the diversion of traffic from Commercial Cable to Mackay, in the case of Holland would result in lower revenue to the American Telegraph industry as a whole.

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The record indicates that you agreed that such would be the effect although you also indicated that that was precisely what occurred when RCAC began to operate to Holland as well as other points throughout the world.

Do you understand RCAC is presently competing with Western Union and Commercial Cable for traffic to Holland and from Holland? A. Yes, sir.

Q. If their competitive effort is successful and they do succeed in diverting even more traffic from the cables than they have already succeeded in obtaining what will be the effect? A. Each message which RCAC handles to and from Holland reduces the amount of revenue return to the American companies as opposed to cable handling, and the same thing applies to every other point served by RCAC which the [1713] cables can reach directly.

Q. At pages 1331 to 1337 of the transcript of record a series of questions was asked you concerning the effect on Commercial Cable Company of the inauguration of direct Mackay circuits to Portugal and Holland and the effect upon All America of the effect of a new Mackay direct circuit to Surinam.

You recognized that the diversion of traffic to the direct Mackay circuit from the present handling of such traffic, by the cable companies, would reduce the traffic handled by cable to those points to the extent of such diversion.

You indicated also, however, that despite similar diversions to other Mackay direct circuits in the past, the cable companies have been handling increased volumes of traffic, and that the overall effect had not been to reduce the need for cable facilities. Would you please amplify your views in that respect? A. First of all, it is important to remember that our cables handle traffic to and from many points throughout the world other than the three points in question in this case, and in addition to other points with which Mackay maintains radio circuits, the overall volume of telegraph traffic has increased, as the

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exhibits in this case show, and I believe that the cable companies, both ours and [1714] Western Union; have done very well in getting their proportions of those increases in overall traffic.

Mr. Tower has also testified concerning this matter, and will present additional evidence when he comes back to the stand.

The actual effect on Commercial or All America, of the inauguration of a direct Mackay circuit depends on many variables which prevents an accurate evaluation.

When we take traffic from Commercial and give it to Mackay, there is a reduction in traffic which Commercial might potentially have handled, unless in the absence of a Mackay circuit, there would have been diversion of that traffic to competing radio systems:

Unquestionably during the past thirty years there has been much cable traffic diverted to radio circuits unwillingly from the cable carriers, particularly in the inbound direction.

However, in the case of diversion between the companies of the AC&R system we have no doubt that the improvement in service which results from the establishment of direct facilities and the increased overall coverage of the system, does benefit the system generally, and each of the companies within the system specifically.

As I have indicated a few moments ago, a customer who has a substantial file throughout the world may prefer to [1715] use another system, if he knows he cannot reach certain points such as Surinam satisfactorily through our facilities. Similarly if we can provide a coverage equal to or greater than our competitors our system may well obtain traffic to points other than Surinam by giving a customer who has traffic for many points in addition to Surinam, a satisfactory service on its Surinam traffic. In our view we cannot over-estimate the importance of thorough coverage to communications carriers.

Forest L. Henderson, for Intervenor—Cross.

By Mr. Hartman:

Q. What about the financial effects of such diversions on the individual carrier within the system? A. I am not at all sure that the financial effect on the cable companies of diversions to new Mackay direct circuits is adverse to the cable companies in the long run, but even if an actual reduction in revenue to the cable company results, we are not concerned, because in every instance we know that the overall financial effect to the AC&R system, is beneficial.

As I testified before, we think, in terms of system revenue, we do now and propose to continue through the AC&R structure, supporting any part of the system which needs help, through the earnings of that portion of the system which happens to be more profitable. An increase in revenue to any of our carriers will directly benefit each [1716] arm of the AC&R group.

Q. At pages 1338 through 1345 of the record, Mr. Margraf asked you a series of questions apparently suggesting that the AC&R group consider a proper rate to be one which would permit each of our companies separately to earn a reasonable return.

You indicated that you did not believe this to be the position of the company, but rather that we took the position before the Commission that a reasonable rate should be based upon the industry as a whole: would you please amplify that comment further? A. The position which the AC&R companies took in the recent rate case is indicated clearly in the memorandum brief filed with the Commission approximately one year ago on June 13, where we said at page 2:

“This Commission in a proceeding of this sort should accept as a yardstick the net earnings of the international telegraph communication industries as a whole.”

Although Mr. Tower can give you much more information as to the details, I understand that the rate proposals

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made by the AC&R system, would not have been sufficient to even come close to pulling Commercial Cable out of the red, but that our rate proposals were based upon the requirements of the AC&R group, without specific attention to the needs of any individual arm or company of the AC&R system.

[1717] Q. Mr. Henderson, Mr. Margraf referring to Exhibit No. 3 in this case which reflects the routings of the different companies, an exhibit introduced by the Commission, with reference to that Mr. Margraf asked you concerning the normal routing of AC&R traffic to a number of countries to which Mackay's direct circuits are now the normal route, whereas traffic at one time in the past was handled by one of the cable companies.

You indicated that as a matter of company policy Mackay would be the normal route for all AC&R traffic in the situation in which Mackay had a direct circuit whereas the cable circuits were indirect.

You recognized also, I believe, that such diversions would reduce the volume of traffic and revenue of the affected cable company in respect to such points.

Do you know of any other situation in the international telegraph field in which a similar practice is found, with the specific approval of this Commission?

[1718] A. Schedule B of the international formula provides an even more extreme example of the same basic principle. Under the special agreement between Western Union and RCAC, Western Union transfers to RCAC, 60.5 per cent of its total outbound messages destined to Continental Europe and beyond the Continent as defined by the formula.

There are certain specific countries excepted.

In approving Schedule B, this Commission said in its **[1719]** decision, found in volume 10, FCD reports, and at pages 190 and 191:

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"The traffic thus to be transferred from the Western Union Cable system to RCAC is limited to messages to Continental Europe and points beyond. This serves a public interest, in having direct communication with foreign points since the messages thus transferred would have to be relayed at intermediate points if handled by cable, but can be handled by radio directly to destination. In addition, the United States International Communications System as a whole is financially benefited because RCAC generally retains a larger portion of the toll on these messages than Western Union would retain."

I can assure you that at no time has the diversion of traffic from the Commercial Cable to Mackay Radio circuits resulted in the loss of anything approaching 60.5 per cent of Commercial's total volume of traffic to Continental Europe, and beyond the Continent.

Furthermore, although I do not wish my answer to be interpreted as agreeing with Schedule B, I do wish to point out that in the case of diversions to Mackay from Commercial Cable Company, any loss of revenue to Commercial which results in greater revenue for AC&R system, and the AC&R system as a whole, is beneficial to Commercial Cable.

[1720] Under Schedule B, on the other hand, the diversion of traffic from Western Union to RCAC does benefit RCAC, but is it a definite and a perpetual loss to Western Union? Certainly if the theory of Schedule B is acceptable to this Commission, permitting a diversion of traffic between competitors, there can be no sound fundamental objection to the diversions of traffic within the AC&R system as between two closely affiliated companies which do not compete.

By Mr. Hartman:

Q. Mr. Henderson, during the course of your examination you indicated the general policy of the AC&R system

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as to the routing of traffic between our companies. You had prepared a brief statement of the basic principles followed, recognizing that there were exceptions depending on the individual circumstances as to each country.

Your statement of policy was somewhat scattered throughout the record and punctuated by questions of counsel and I wish you would repeat that basic statement in order that we may have the concise presentation of your policy at one point in the record? A. I will divide my answer again in two parts:

(1) Unrouted traffic: we handle unrouted traffic over cable and radio on a basis that we feel will give the customer the best possible service at all times and [1721] in a manner that will make the best use of AC&R system facilities.

(2) Routed traffic: If a message is specifically routed via Mackay and we have a direct circuit to the country of destination, we send the message over the direct circuit unless conditions on the direct circuit prevent such transmission. If Mackay does not have a direct circuit to the point or country of destination, Mackay will transfer the message to Commercial or All America if either of those companies has a direct cable route to the country of destination. If Mackay has no direct radio circuit and neither Commercial or All America has a direct cable circuit, then Mackay will handle the traffic over whatever route it deems qualified to effect prompt and accurate transmission to destination.

If a message is specifically routed via Commercial and Commercial has a direct cable route to the point or country of destination, we send the message over Commercial's cable unless a cable interruption or other unusual congestion would cause an unreasonable delay. If Commercial has no direct cable route but Mackay has a direct radio route to the country of destination, Commercial will transfer the message to Mackay if experience has indicated that

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this will result in a quicker handling of the message than by transferring it to a foreign carrier at an intermediate [1722] point. If Commercial has no direct cable route and Mackay has no direct circuit to the country of destination; Commercial will handle the traffic over whatever route it deems qualified to effect prompt and accurate transmission to destination.

The foregoing practice of Commercial likewise applies to traffic routed via All America.

By Mr. Hartman:

Q. I believe your statement is sufficiently clear, Mr. Henderson, with the possible exception as to the elements which govern the distribution of traffic where neither cable nor radio provide a direct routing. A. If there is a noticeable difference in service, the best route for service purposes is used. If the two or more indirect routes available are relatively equal from a service standpoint, I would say that there are a number of considerations of which possibly the most basic are the revenue returned to the system, the possibility of obtaining return traffic, and the desire to maintain a reasonable balance of traffic between our cable and radio systems in order that both may be maintained and kept in a usable and useful condition.

As I indicated in cross examination, however, each country presents a somewhat varying problem, and it is difficult to generalize in such a way as to indicate the [1723] relative importance of these different elements which must be considered.

Mr. Werner: I would like to ask one question to complete his answer with respect to the practices of AC&R system in regard to routing traffic.

Mr. Hartman: Surely.

Mr. Werner: I don't believe you indicated what the practice is where both AC&R and Mackay have a circuit to a specific point with respect to unrouted AC&R traffic.

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The Witness: I believe I explained at some length, Mr. Werner, in connection with U. K., previously. That is one case where we both have a direct circuit.

[1724] By Mr. Hartman:

In response to the series of questions which Mr. Werner asked, as to why Commercial Cable did not secure direct working connections to many points beyond the Azores as has Western Union or as has All America in South America, you have indicated earlier this morning in your redirect examination that you do not consider many of the circuits described as being actually direct circuits.

However, in the event it was feasible technically to actually establish electrically direct operation by cable to interior points in Europe, do you consider it as a possibility in providing facilities comparable to those you can offer through direct radio operations? A. No. First of all, in respect to All America, it must be remembered that that company is working through its own physical facilities, almost entirely and under concessions which give it considerable latitude in its operations.

Consequently, it has a relatively favorable position to provide direct cable connections and self controlled land-line connections for its cables.

Furthermore, in most instances, it is not competing with a foreign administration which has a parental interest in its own international communication facilities.

[1725] Commercial Cable, on the other hand, would necessarily work through the facilities, both cable and land-line of another company or administration. It would be dependent entirely on the facilities which such other company or administration could and would provide. It would be subjected to interruption and interference and censorship by such intervening company or administra-

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tion, and furthermore, by any other country through which it passed.

In addition, throughout Europe, and in almost every country, the domestic telegraph system of the nation and the international radio facilities which it provides, are directly related either through ownership or exclusive concessions. It is difficult to imagine that those foreign points would be at all interested in diverting traffic from their own international systems, or in granting commercial cable privileges which would permit us to compete on relatively equal terms with their own systems for traffic outbound from such countries.

There can be little question in the minds of any of us who know the telegraph business that radio has a far more favorable position under any conditions than has cable with respect to traffic to continental Europe and beyond, with the exception of those few countries along the coast to which a cable can operate directly, entirely through its own facilities.

Mr. McPherson has already testified as to the trials and [1726] tribulations of Commercial at various points, particularly Holland and Portugal.

[1731] Q. Mr. Henderson, questions arose on cross examination with Mr. Scholz concerning the capacity of the New York Tangier circuit from a standpoint of adequacy in the handling of United States Holland traffic. In the event operation through Tangier is authorized, will you please state for the record what that capacity situation is? A. In the first place, of course, the New York-India direct circuit through Tangier is an entirely separate facility. Likewise, the Presscast transmissions through Tangier use separate facilities.

The printer circuit between New York and Tangier which is used for the traffic to and from Russia, Romania, Ethiopia and a few other points has a theoretical capacity of 86,400 words per day.

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If you assume a 30 word per minute actual capacity, you still have over 43,000 words possible per day and approximately 1,800 words during any one hour. Mr. Tower advises me that taking into consideration all of the traffic handled between [1732] the United States and points served through Tangier, excluding India, the average volume per day approximates 24,000 words. Obviously the increase in traffic load which may be anticipated in the event such traffic is so handled would not in any way tax the facilities available presently between the United States and Tangier.

Q. In response to questions by Mr. Werner at pages 1433 and 1434, you corroborated Mr. Stockton's statements as to our ultimate intent and interest in getting direct radio circuits to many other points throughout the world, including those reached by RCAC.

Do you visualize that program as one to be accomplished today, or are you considering it as a long-range proposition?

A. It is, of course, a long-range program. We cannot hope to expand to the degree indicated immediately, and there will be changing circumstances which may affect our decision to apply for certain of these circuits in the future.

That is, however, our ultimate aim if it can be realized. In the case of the points now at issue, we had managed to secure their agreement to operate with us. We have applied for other points in the all points case, and we will undoubtedly apply for still further points in the future.

Of course, securing the agreement of the foreign operating entities is one of the prerequisites to opening new direct circuits.

[1733] *Re-cross examination by Mr. Margraf:*

Q. Why did you select to start out your expansion program the three points involved in this hearing—Holland, Portugal and Surinam, with reference to the last answer you gave? A. I think I testified to that.

Forest L. Henderson, for Intervenor—Re-cross.

Q. Is there anything other than the absence of an agreement with the foreign correspondents which hold you back from other points? A. No. We are going to try to get all of the points we can.

Q. You have no agreement with foreign correspondents [1734] for any other points at the moment? A. I can't think of any at the moment.

Q. Is the absence of the agreement the only thing which prevents pushing the applications for the other points? A. We are going to push them all we can.

Q. Are there any other reasons other than the fact that Mackay does not have agreements with the foreign correspondents which prevent Mackay's pushing the applications for the other points? A. Not that I know of.

[1759] Q. You gave further testimony this morning, Mr. Henderson, about the method of operation of the circuit with The Netherlands. As I understood your testimony it is that the normal operation will be on a independent circuit. A. That is right.

Q. Forked at some times. A. That is right.

[1761] Q. As of the time the application was made and this statement was made it was intended to operate the circuit on a forked basis and since that time Mackay has [1762] changed its mind to plan operations on an independent basis. A. Latitude was left in the statement where it says "In the event that traffic loads should very substantially increase in the future it may be that an independent circuit or a regrouping of forked circuits would have to be set up for The Netherlands."

Mr. Magraf: Would you read my question back? See if we can get an answer.

(Question read.)

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Q. Since that time has Mackay changed its mind to plan operations on an independent basis? A. It must have because since that time it has operated on an independent basis.

Q. What does this mean: "changed its mind to plan operations on an independent basis for The Netherlands"? Does that mean that that possibility had been discarded? A. Yes:

Q. You were not able to testify very clearly about this when you were here before. It was brought out on redirect this morning. When did you change your mind on it? When was it clarified in your mind? A. I think my testimony gives that.

Q. Would you mind repeating it? A. I told you I couldn't give the date when Mackay [1763] changed its mind as to when we were going to operate on a direct basis.

Q. Who determines these questions—you or someone else in the company. A. I have something to do with it.

Q. When did you make up your mind? A. I can't give you the exact date and month and year.

Q. Was it sometime between—— A. Between the time this was written and the present time.

[1853] CHAUNCEY R. MCPHERSON, a witness called on behalf of Mackay and Radio and Telegraph Company, having been previously duly sworn, resumed the stand and testified further as follows:

Cross examination by Mr. Margraf:

[1857] Q. What was the nature of your duties with All America while you were Secretary? A. Well, I dealt with their relations in South America primarily, Central America and the West Indies, in addition to the ordinary Secretarial duties.

Chauncey R. McPherson, for Intervenor—Cross.

Q. What was the nature of your duties as Vice President of All America? A. Very much the same:

Q. In what capacity did you act when, in 1942, you were abroad dealing with the Portugal situation? A. Well, I went to Europe at that time in connection with problems of primarily Commercial Cable Company.

Q. You were not an officer of Commercial Cable Company? A. No.

Q. You were not an employee of Commercial Cable Company? A. No.

Q. While you were abroad during 1942 you also dealt with problems of Mackay? A. Yes, sir.

Q. You were not at that time an officer or employee of Mackay, were you? A. No, but of the holding company.

Q. Now, can you tell us a little bit more about the scope of your duties as Vice President of All America during the [1858] period, say, of 1940 to 1947? A. From 1940 to 1947?

Q. Yes, in that general period. A. Well, as I say, primarily in connection with their relations with the Latin American countries.

Q. What kind of relations? A. Legal relations and public relations in connection with those countries.

Q. What I mean is whether that involved also commercial relations? A. Not with the public, more with the governments, such things as concessions, franchises, authorizations.

Q. Do I understand that you were primarily concerned during that period from 1940 to 1947 with the relations of All America Cable and Radio in its Latin American activities? A. So far as All America is concerned, yes.

Q. At the same time did you perform functions for other companies in the AC&R system? A. Oh, yes.

Q. What was the nature of the functions which you performed? A. Very much the same sort of thing, except that it extended the territory to include Europe and other parts of the world.

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Q. Was an allocation made of your salary among the various companies at that time? [1859] A. That I would not know. I can not tell you.

[1864] Q. Do I understand that Commercial continued to operate with Ital-cable until the cables were cut in 1940? A. That is right.

Q. Do you recall at what time in 1940 the operations with Ital-cable ceased? A. No, I do not.

Q. How were the messages handled after the cables were cut? A. The Ital-cable messages?

Q. The Commercial's messages. A. Well, the Commercial's messages were then taken out by the Eastern.

Q. What was the nature of the arrangements made with Eastern at that time? A. Well now, this would be in 1940?

Q. Yes. A. Well, there were no arrangements at that time existing with Eastern, that I know of, so that, in effect, Commercial did not get any business at all out of Portugal.

[1865] Q. So then the cutting of the Italian cables in 1940 caused a very substantial diminution in the amount of traffic that Commercial got from Portugal? A. Oh, as I recall it, it practically eliminated it, because I think it was at that time that the Eastern had this arrangement with the Western Union whereby they turned over all of their Portuguese traffic to the Western Union at the Azores.

Q. Do you have Exhibit 166, Mr. McPherson? A. Yes.

Q. Looking at the first column Commercial Cable Company inbound to the United States, your exhibit shows that in 1939 Commercial handled 37.1 per cent of the traffic inbound to the United States, and in 1940 the percentage dropped to 13.8 per cent. Was that the result of the cutting of the Italian cables?

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[1866] Q. I understand. You have testified that the cables were cut in 1940 and after that no arrangements were made with any other carrier for the sending of traffic over Commercial's facilities, and, further, that the cutting of the cables practically wiped out Commercial's traffic. I am now asking you whether all of that is not confirmed by the information in Exhibit 166, which shows a very substantial drop in the percentage of traffic handled by cable in 1940. I should think so.

[1868] Q. Do you know whether or not there was any lessening of the soliciting activities of Commercial after the cutting of the Italian cables? A. Yes, there was.

Q. Would you say that such lessening of soliciting activities occurred in 1940? A. 1940 or early 1941.

[1869] Q. In 1939, in the last full year that Ital-cable was operated, Commercial carried 37.7 per cent of the inbound traffic to the United States, as shown by AC&R Exhibit 166.

In 1941, which was the last full year of operations before the Portugal decree as implemented by the further directives of November, 1941, when it became effective, Commercial's traffic had dropped to 3.7 per cent, and then there was a drop of a little over 2 per cent, 2.3 per cent in 1942, the year after the decree became effective. Now, isn't it true from these figures that almost of the drop in traffic that Commercial handled out of Portugal occurred prior to the time of the Portuguese decree as it became effective and was implemented? A. Yes, that is true.

[1871] Q. Then is it your conclusion that the reason Commercial is not able to get more traffic inbound from Portugal is that Commercial does not send enough out-

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bound traffic to Portugal? A. Well, if you are speaking of cable traffic, that is true.

Q. So the deficiencies which Commercial suffers for inbound traffic stems from causes related to the handling of outbound traffic to Portugal, is that right? A. If you are speaking purely of cable traffic, that is true.

Q. Let me put it this way. The implication I get from reading the first paragraph of Exhibit 107 is that Commercial's [1872] operations in Portugal were carried out through relations with Eastern Telegraph Company from the time they commenced operations in Portugal in 1901 until they ceased operations in around 1940 or 1941. A. Well, except for that short period when we were operating in conjunction with Ital-cable.

Q. That was a period of around ten years, was it not? A. Yes, that is true.

Q. It seems to me that something essential was omitted from the letter to the Secretary of State, which is Exhibit 107, in that the operations of Ital-cable were not mentioned, and since the cutting of the Italian cables was a very substantial part, if not the real cause of Commercial's plight in Portugal, that there was a substantial omission. Can you explain why no mention was made in this letter to the Secretary of State of Commercial's operations with Ital-cable? A. No, I can not.

[1875] Q. Is it true, isn't it, Mr. McPherson, that the Portuguese have always contended that there was no discrimination against Commercial resulting from the Portuguese decree? A. Well, the use of the word "discrimination" is difficult to interpret. They did admit, of course, to putting Commercial out of Portugal, but they never admitted there was any discrimination, because Commercial did not land a cable in continental Portugal, and their decree was aimed at giving canvassing rights only to those communication companies that had landings actually in continental Portugal.

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Q. Did they not likewise take the position that Commercial could have had the same rights in Portugal as Western Union had? A. As Western Union?

Q. The same opportunities. A. Yes, I think there was no discrimination between the two American carriers.

[1881] Q. You and I could argue as to whether a medium carrying one-fifth of the business is an effective competitor, but that is not the point here. You have said in your testimony that it is necessary for Commercial Cable Company to have a radio circuit in order to be an effective competitor. My question is why can not Commercial be just as effective a competitor as Western Union, which does not have a radio circuit? A. Well, I agree with you when you say that they could be just as effective a competitor as Western Union, but I do not consider that effective competition, 22 per cent.

[1884] Q. As the result of the Commission action, all carriers, not merely RCA, but all carriers, were required to send certain waiver provisions to foreign correspondents, were they not? A. Yes.

Q. Did Mackay send any such waivers out? A. Yes, we did.

Q. We discussed this before and Mr. Kennedy supplied the [1885] names of the countries, but I want to get your testimony on the subject. Can you tell me to whom Mackay sent waivers? A. Yes. To Compana, Brazil.

Q. I am asking first about Mackay waivers. A. These are waivers sent by Mackay.

Q. What is the abbreviation of that company? A. CRIB.

Mr. Gibbons: That is Brazil.

By Mr. Margraf:

Q. That is Brazil? A. Yes. To CIDRA.

Q. Where is that? A. That is the Argentine.

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Q. Is that a subsidiary of IT&T? A. These first four that I mentioned are subsidiaries.

Q. Subsidiaries of what company? [1886] A. Well, CRIB and CIDRA, the first two mentioned, are subsidiaries of International Telephone & Telegraph. The next one is to SARA.

Q. That is also the Argentine? A. In the Argentine, and is a subsidiary of American Cable & Radio Corporation. And to CIRSA. That is in Chile, and is a subsidiary of the International Telephone & Telegraph Company. Then in addition to those companies, to the Government of Haiti, and to the Government of Salvador, to Vatican City, to the PTT of Algiers, to Radio Austria, to PTT of Bulgaria, to the PTT of Denmark, and to the PTT of Hungary.

[1907] Q. What control does Portuguese Marconi have over the outbound traffic, that is outbound from Portugal, telegraph traffic I am talking about with Cable and Radio? A. Well, I should explain first the Portuguese Marconi, although it is a British-owned company, is a Portuguese government-controlled company. The managing director must be approved by the Portuguese Government, and a certain number of directors are appointed by the Portuguese Government, but the actual activities of the company, I think I am safe in saying, are 100 percent controlled by the Government. Back in 1940 [1908] and 1941 the trend of the government was to center the control of all the international traffic in Portuguese Marconi, whether it was radio or cable, and then they passed that decree which limited the routings and canvassing, and they had in actual practice for a few months given Portuguese Marconi complete control of all the traffic in Portugal destined to interior points.

Q. Now let me interrupt you. At that time were there any limitations placed upon Portuguese Marconi's ability to divide traffic between Cable and Radio, or was it within

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Portuguese Marconi's complete discretion? A. Well, for that very brief period I think there was no restriction, for a period of some few months. Then after that, as I understand it, Eastern was able to reinstate, to a certain degree, its former position and were able to receive traffic directly from the public. Then I believe that was further modified, and I think now that traffic may be filed directly in the Lisbon office of Eastern by the public, but all other traffic is filed either with the Post Office or with Radio Marconi.

Q. Now traffic filed with Radio Marconi, which is unrouted, is within the complete control of Portuguese Marconi? A. That is true.

Q. It can send it by cable or radio as it sees fit? A. Yes.

[1909] Q. As a matter of practice, does it ever send any by cable? A. Well, it did for a time. I do not know what it is doing now. It did give cable some unrouted traffic.

Q. Pursuant to what kind of arrangement with the cable company? Did it have any agreement with the foreign cable companies? A. It had no agreement with them. It did it, as I say, out of the kindness of its heart.

Q. What happens to the traffic which is filed with the Post Office Department? A. Well, unless it is specifically routed by the sender via Eastern, or some other recognized routing that they may have now, it goes to Radio Marconi.

Q. So Radio Marconi then has control over that traffic? A. Yes.

Q. Sole control over that traffic? A. Yes.

Q. Now let us get back again to your agreement with Portuguese Marconi. The agreement with Marconi is that they transmit over Mackay an amount of traffic which is proportional—let me go back a little bit—an amount of traffic under the control of Portuguese Marconi which is proportional to the traffic, the radio traffic that Mackay sends to Portugal? A. That is right.

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[1910] Q. And this proportion of traffic from Portugal is based upon the total traffic within the control of Portuguese Marconi? A. Radio traffic?

Q. Well, total traffic. A. Well, they distinguish between radio and cable traffic, because we understand now in Portugal you can mark it via cable and that that cable routing will be recognized.

Q. So that, in effect, is not traffic under the control of Portuguese Marconi, it is the traffic which Marconi must send by cable? A. I do not know how much the "must" is, but they do recognize it.

[1917] Q. Let us turn now to the arrangement with The Netherlands. What precisely is the arrangement between Mackay and The Netherlands Administration for proportional division of traffic inbound to the United States? A. On the same basis.

Q. There were several letters, as I see it. Exhibit 128 is a letter from Mr. Henderson to Mr. Nehr proposing a certain arrangement, and Exhibit 129 is a reply advising that The Netherlands Administration is in principle willing to establish a radio circuit, and then a letter dated January 22, 1947, which is Exhibit 130, from Mr. Henderson again to Mr. Nehr, setting out a certain arrangement. Is the arrangement that The Netherlands Administration will return by way of Mackay a volume of traffic, a volume of the total radio traffic which is proportional to the amount of radio traffic which **[1918]** Mackay sends to Holland? A. Yes.

Q. That is the arrangement? A. Yes.

Q. Exhibit 130 contains the statement, "Mackay will transmit all its traffic destined to Holland and all traffic of the Commercial Cable Company destined to points in Holland excluding Rotterdam not otherwise routed, and guarantee that the volume of traffic transmitted over any

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twelve months' period shall not be less than 50 percent of the total volume of traffic within control of Mackay and Commercial Cable destined to Holland including Rotterdam."

Now let us assume that the traffic which is available under this arrangement does not amount to 50 percent of the total volume of traffic sent by Mackay and Commercial, where would the deficiency come from? Would it come from the Rotterdam traffic? A. Yes, it would have to.

Q. Or it might possibly come from traffic which is specifically routed over Commercial Cable to a point other than Rotterdam, is that right? A. Well, we have to make up the guarantee of 50 percent one way or the other. We might even pay for it, I don't know.

Q. Has this provision which I have read been agreed to by the Holland Administration? [1919] A. Well, I am not sure that they specifically agreed to it.

Q. My question is whether that is the contractual arrangement. A. That is the arrangement as we understand it, yes.

Q. That would indicate that the The Netherlands Administration has agreed to it, would it not? A. I am not sure that I have a cable or a letter to that effect.

Q. But that is your understanding as to the contractual arrangement with The Netherlands Administration? A. Definitely.

Q. Does that mean that the A. C. & R. Company's ability to send traffic to Holland will depend to a large extent upon the traffic which the A. C. & R. Company might otherwise send by Commercial Cable Company? A. Well, I would not necessarily think so.

Q. Does not this provision mean, as it is stated in the provision, that Mackay will divert certain Commercial traffic? A. That is right.

Q. Or, rather, that Commercial will divert the traffic to Mackay, and that if there isn't enough of their traffic to make up the total of 50 percent which is referred to in

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Exhibit 130, then additional Commercial Cable Company traffic would [1920] have to be diverted to Mackay? A. That is true.

Q. The total diversion to Mackay, plus the traffic which Mackay itself might get, would make up the total volume of radio traffic which Mackay sends to Holland? A. Yes.

Q. And it is on the basis of that volume of traffic that Mackay obtains a proportional return of the traffic from Holland? A. That is true.

Q. So the amount of return traffic that Mackay gets from Holland is derived, to a large extent, perhaps from the amount of cable traffic which is diverted from Commercial to Mackay? A. To some extent, yes.

Q. Isn't this an instance of where Mackay secures a more favorable proportion of return traffic, inbound traffic, because of the fact that there is a tie-up between Mackay and Commercial Cable Company through their being owned by the same parent company? A. Undoubtedly.

Q. Under those circumstances doesn't it make it rather difficult for a solely radio carrier to compete on an equal basis with another system handling traffic to a given country? A. You mean for a carrier that has only one means of [1921] transmission to compete against one that has two?

Q. That is right. A. I think so, definitely.

Q. Is not this an excellent example of the quite substantial competitive advantage which might accrue to a system which has a combination radio and cable? A. Yes, I think so.

Mr. Werner: I want to ask one question in connection with that letter. Why was the guarantee of 50 percent made, do you know, Mr. McPherson?

The Witness: Yes, because the Dutch asked for it, and when we canvassed the business we figured we could do it very safely.

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By Mr. Margraf:

[1922] A. Whether we would get a better proportion, per word, by radio than cable?

Q. Whether The Netherlands Administration gets a financial advantage. A. Oh, The Netherlands Administration?

Q. Yes. A. By taking over our cable traffic?

Q. By diversion of traffic from cable to radio. A. I do not quite understand. You mean by our forwarding by radio rather than by cable?

Q. If traffic is sent via Mackay instead of via Commercial, that is if it is diverted from Commercial to Mackay. A. From the United States?

Q. From the United States. Will The Netherlands Administration retain a larger percentage, or will it retain more money than if the message is sent by cable? A. Yes.

Q. Is the same thing true of traffic from The Netherlands to the United States? A. That I am not sure of.

Q. Did that enter into the discussion? Was that subject mentioned in the discussions with The Netherlands Administration for the circuit? A. Not so far as I know.

[1923] Q. Did you participate in the discussions which culminated in Mr. Henderson's letter of January 20, which is Exhibit 130? A. I did in a great many of them.

Q. You say you did? A. Yes.

Q. Did The Netherlands Administration consider this guarantee of 50 percent of total volume of Mackay-Commercial traffic as an important point? A. Yes, it did.

Q. Were the discussions had with respect to that 50 percent guarantee? A. Yes.

Q. What was the nature of the discussions? A. Well, there were discussions with respect to that between our representative, Mr. Spangenberg, I believe, and The Netherlands Administration.

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[1925] By Mr. Gibbons:

Q. Mr. McPherson, in connection with Exhibit 128, of which mimeographed copies were made and produced in this hearing, will you compare that with the copy of the original as it appears in the company's files here and make such corrections as may be necessary with respect to paragraph 4? Suppose you read the paragraph from the carbon copy of the letter as it appears in the files. A. There has been an omission of practically two lines in this mimeographed copy of the letter. The paragraph should read:

"Mackay will guarantee that the volume of traffic transmitted by it over the circuit for any-twelve months' period shall never be less than 50 percent of the total volume of traffic within the control of Commercial and Mackay, and destined to all points in Holland including Rotterdam. Approximately 70 percent of the total eastbound traffic destined to Holland handled by both these companies during the month of August last, was destined to points in Holland outside of Rotterdam."

Mr. Gibbons: Mr. Commissioner, may we consider Exhibit 128 modified and changed accordingly, as has just been indicated by Mr. McPherson?

Commissioner Jones: Without objection, Exhibit 128 is [1926] corrected as indicated by the testimony of Mr. McPherson, reading from the company records.

[1927] By Mr. Margraf:

Q. I would like to refer again, Mr. McPherson to Exhibit 130 and the guarantee of volume of traffic—the 50 per cent guarantee in Exhibit 130.

In that general connection does Commercial guarantee any particular volume of business in its cable contracts with The Netherlands Administration? A. No, it doesn't

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guarantee an amount of traffic but it guarantees a terminal charge.

Q. In Article 7 of Exhibit 136 there is this provision:

“The company guarantees to the owners of The Netherlands British Cables in respect of the connection referred to in Article 2, an annual revenue of cable charges of 5,000 pounds subject to a proportionate reduction under certain circumstances.”

Just precisely how is that worked out? Is there a certain charge for each cable message? A. Yes. That is in the nature of a terminal charge, and I think the amount is 10 centimes per ordinary word. I am [1928] not sure about that.

Q. Those charges then are applied against this 5,000 pound guarantee? A. Yes, they have to amount to at least that much and if they do not amount to that much then we have to make up the difference.

Q. Do you know whether or not there has been a difference to make up? A. No. So far as I know there has always been sufficient traffic to cover it.

How much of a margin has there been, do you know? A. I would say at least 75 or 100 per cent margin. I mean there has been twice as much traffic as necessary to cover that guarantee.

Q. That traffic has been traffic to Rotterdam and elsewhere in The Netherlands, is that true? A. Yes.

Q. If traffic is diverted from Commercial Cable Company to Mackay, isn't it likely that there won't be enough traffic over Commercial Cable to reach this guaranteed amount? A. We don't think so, from our preliminary studies.

Q. In Exhibit 128 there is a statement in the paragraph which was corrected before lunch that 70 per cent of the total inbound traffic destined to Holland handled by both these companies—meaning Mackay and Commercial—during the month [1929] of August was destined to points

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in Holland outside of Rotterdam. What would you say is the normal amount of traffic handled by Commercial which goes to points outside Rotterdam? Is the 70 percent figure a fairly normal figure? A. It would be purely a guess on my part but I would think not.

Q. Would you think less or more than that? A. I would think less beyond Rotterdam.

Q. Would you say that more than half the traffic goes beyond Rotterdam? A. No. I would think ordinarily less than half goes beyond.

Q. The only figure we have is this 70 percent figure? A. That is right.

Q. That is the only one that you are able to cite? A. That is true.

Q. If the figure is something more than 50 per cent, assuming that it is that—and I don't know what the figure [1930] actually is—and if all of that traffic is to be diverted from Commercial to Mackay, isn't it likely that Commercial won't have enough traffic to reach the 5,000 pound guarantee in the contract with The Netherlands Administration? A. It might be if it were all diverted, yes.

Q. And then that has to be made up—that 5,000 pound guarantee—out of the revenues of Commercial, is that right? A. It would have to be, yes, sir.

Q. So that diversion of traffic from Commercial to Mackay conceivably then, under the kind of assumption which I made in my last question to you, could result in requiring Commercial to make certain other expenditures to make up this 5,000 pound guarantee which it doesn't now have? A. That is possible.

Q. You say it is possible? A. It is possible.

Q. Again, with respect to this guarantee of 50 per cent of traffic, suppose the United States Government wanted to send a message over Commercial Cable Company to The

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Hague, for instance, and for its own good reasons, wanted that message to go by cable, and placed it with Commercial Cable Company, wanting it to go via Commercial Cable Company by cable.

Now, is there any assurance that the United States government has that that message will go by cable? [1931]

A. Yes, if we made a special arrangement for any particular traffic to go by cable I am sure the Dutch would agree to that. You mean after this agreement was in force?

Q. With your arrangements that are now in effect whereby you guarantee a certain amount of traffic to go by— A. I am confident that it would.

Q. How can you be sure that it wouldn't be necessary under your agreement with the Dutch to divert this government message from cable to radio, in order for you to fulfill your commitment with the Dutch? A. If we were reduced to that extent I am quite sure we would pay the difference to the Dutch.

Q. Of course we are not concerned about a single government message that would create a problem, but if there were large numbers of government messages it may well work out that those messages would have to be diverted if this provision were to be lived up to. A. No. I say if the government or any other customer asked particularly to have his messages routed by cable we would undertake to see that they were routed by cable.

Q. Suppose there is no special arrangement with the government but the government simply routes it via Commercial Cable without saying anything more about it? A. Without requesting a cable route?

Q. I would assume that a routing via Commercial Cable [1932] would be a request for a cable routing, but be it the government or any other customer, as I understand it, the specific commercial routing would be disregarded in order to make up the 50 per cent guarantee, if there were no other way to make up that deficiency? A. In accordance with our regular routing policy that has been described at great length, that is true.

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Q. That is to say, there might be disregard for the specific routing to make up for this 50 per cent guarantee, any deficiency in that, just as there might be a disregard for a specific routing for any other reasons pursuant to the policy which Mr. Henderson described? A. I am not so sure about that. You mean as an exception to our general policy?

Q. No. As I understood your general policy, it is that there may be a disregard for routing by way of a specific AC&R company under certain circumstances, where AC&R feels that there may be improvement in service or otherwise it may be desirable to send a message over a company's facilities which is not the one indicated on the message.

I understand that there may be that disregard for routing as outlined by Mr. Henderson's policy.

Now, do I understand also that another reason for the disregard of a specific routing might be to comply with the guarantee provision in Exhibit 128? [1933] A. No. I don't interpret it that way. If the customer specifically routed via Commercial to Rotterdam, I don't believe that we would disregard that routing in order to make up this balance.

Q. You will have to make up the balance from some place? A. Yes.

Q. You have guaranteed with the Dutch that the volume of traffic handled outbound by Mackay will be 50 per cent of the total volume of traffic to The Netherlands handled by Mackay and Commercial? A. That is right.

Q. And if the traffic which goes outside Rotterdam, unrouted traffic of Commercial Cable Company, isn't sufficient to make up this amount, then, as I understand this provision, that deficiency will be made up from traffic going by way of Commercial to Rotterdam or Commercial traffic which is specifically routed via Commercial but going to some part other than Rotterdam? A. If it ever came to that extent, I don't believe that we would disregard the

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customer's routing. I think we would have to make good on the guarantee, not with live traffic, but financially.

Q. Under the arrangement with The Netherlands Administration, Mackay has agreed to send all Commercial traffic over Mackay— [1934] A. To points outside.

Q. (continuing)—to points outside Rotterdam? A. That is right.

Q. So in the normal course of operations for government messages sent to The Hague those would be sent not over Commercial but over Mackay? A. That is true without a specific request by the government for treatment otherwise.

Q. Suppose there were no more of a request than an indication on the blank "Via Commercial", what would be done? Would it be sent pursuant to this agreement over Mackay? A. It would be sent over Mackay. That is my understanding.

[1938] Q. Looking at Exhibit 165, the first column Commercial Cable Company, inbound to the United States, figures for the traffic inbound.

For 1946, which was the first full year of operation after The Netherlands was liberated, Commercial Cable Company handled 11.1 per cent of the total industry traffic from Holland. For the first six months of 1947, the percentage increased to 17.2 per cent.

Isn't that about at the pre-war levels for the traffic from Holland? A. Yes, it is.

Q. On a percentage basis? A. Yes.

Q. Don't these figures indicate that despite the approach which you say is being used by the Dutch in obtaining traffic—that is, the appeal to the national interest—Commercial has been able to get its inbound traffic—the percentage of traffic handled inbound—about back to prewar levels and [1939] even above prewar levels? A. Well, yes, it does.

Q. How can you say in the face of that, that Commercial is suffering from this nationalistic policy? A. I can only say that the effort is that much greater.

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Q. What do you mean by that? A. That the canvassing efforts have to be increased.

The canvassing efforts by whom? A. By Commercial?

Q. By Commercial. A. Yes.

Q. So that by such canvassing efforts, Commercial then, only because of the intensification of Commercial's canvassing efforts, is going to be able to overcome this appeal to the national interest? A. Yes.

Q. That refers to competitive activities in Holland? A. That is right.

[1940] Q. Now, Western Union is subject to the same difficulties as Commercial in obtaining traffic in the face of the Commercial practices of the Dutch? A. Exactly.

Q. Despite all of that, both Commercial and Western Union are getting their proportion of traffic about back to pre-war levels? A. That is true.

[1950] Q. You testified in your direct testimony, Mr. McPherson, about commercial activities of Commercial Cable Company in Holland. Is it correct that Commercial Cable Company does maintain public offices in Rotterdam? A. An office in Rotterdam.

Q. A single office? A. Yes.

Q. Does it maintain an office in any other city? A. No.

Q. How many solicitors are employed now? A. I couldn't say.

[1951] Q. Are there a number of them? A. There are more than one, but how many, whether it is three or five or seven or eight I wouldn't know. Not very many, I can assure you of that.

Q. Are tie-line facilities maintained? A. We have 12 private telephone lines to customers in Rotterdam and one telex line to one customer in The Hague.

Q. Is there pick up and delivery service? A. In Rotterdam?

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Q. In Rotterdam. A. Yes.

Q. In Rotterdam only? A. Yes.

Q. Call boxes? A. No call boxes.

Q. Are there any solicitors outside Rotterdam? A. No. But we send solicitors outside of Rotterdam occasionally.

Q. So the soliciting activities go beyond Rotterdam?

A. Yes, sir.

Q. Are there any commercial activities such as advertising for traffic outside of Rotterdam? A. I think not.

[1952] Q. Would you describe the activities of the solicitors as fairly vigorous in attempts to solicit traffic?

A. Yes, I think as vigorous as possible.

Q. Is that because there is considerable competition in Holland for the handling of that traffic? A. Very considerable.

Q. Now, on page 322 of the record you testified with respect to refunds for telephone connections for customers who have filed certain volumes of traffic. Are these refunds about which you testified on page 322 available for customers of the cable companies as well as for customers of the Holland Radio? A. Yes, they are.

Q. And does Commercial Cable Company actually offer refunds to its customers? A. Yes. I think I can tell you from memory. We pay the rentals for these 12 telephone lines that I spoke of, and for this one telex, on the basis that we are permitted to pay for the rental of a local telephone in Rotterdam, provided that a customer's file with us exceeds 2500 florins a year.

We are also permitted to refund the telex rental if the customer within Rotterdam has a file exceeding 20,000 florins a year, or half of his rental if it exceeds 10,000 florins per year.

[1952] If the client is outside of Rotterdam we can make a complete refund of his telex rental if his files exceed 10,000 florins a year, or 50 percent of his rental if it exceeds 5,000. So, on that basis we do pay for this one telex that I speak of to The Hague. Then we are permitted to

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refund the tolls, either telex or telephone, on any particular message that they telephone in or telex in.

Q. Regardless of the— A. Regardless of the amount of files.

Q. And regardless of whether the customer is located in Rotterdam or elsewhere? A. That is true.

Q. So that on each individual message Commercial Cable Company is permitted to refund telephone tolls. A. Or the telex tolls.

Q. Or the telex toll. A. And they distinguish between the toll and the rental.

Q. What is the difference between the toll and the rental? A. I mean the rental is an annual amount which you pay for the privilege of having a telex connection; and then in addition to that you pay a certain toll when you use it.

Q. You mean then the persons who pay rentals, pay in addition to the rental the toll for the use of the [1954] line? A. I assume so.

Q. Is that actually a fact? A. It appears to be.

Q. Do you know? A. Yes.

Q. This refund of rentals in the circumstances where you say it may be done, and the refund of telephone or telex tolls is available, or may be made by all the telegraph companies, may it not, cable and radio? A. As you see from what I said, a filer, with us, to get a refund of his rental or telex, must have a file of 20,000 florins per year.

Q. If he is in Rotterdam. A. In Rotterdam. But to get the same privilege from Holland Radio who is not in Rotterdam his file would only have to amount to 10,000 florins per year.

Q. Isn't the opposite true for the customer who is in Amsterdam? A. Exactly the same.

Q. You can refund his telephone rental if he has a file of 10,000 or more florins? A. That is right.

Q. But the telegraphic agency— A. It is half as much if it is outside of your city.

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[1955] Q. So it works both ways then, doesn't it? A. Exactly.

Q. You testified that the possibility of refunds causes some customers in Holland to send traffic over carriers other than Commercial. A. Yes.

Q. Can you identify a customer who has been influenced to send his traffic over a company other than Commercial?

A. Oh, no; I couldn't. But it just seems so obvious that we can only handle American traffic, and therefore his file of American traffic has to amount to the maximum or the minimum, whereas with Holland radio he can file traffic to all points in the world.

Q. Do you know of any customers though, who— A. No, I don't.

[1977] Q. With respect to Exhibit 130, regarding the guarantee of 50 per cent of the traffic, you have indicated if necessary you might make up that 50 per cent by taking traffic destined to Rotterdam from Commercial Cable Company and sending it over Mackay's circuit.

Is that consistent with the alleged AC&R policy of sending the traffic over the circuit which in the opinion of the AC&R company gives the best service? A. No, but my recollection was that in declaring that policy, Mr. Henderson qualified that to the extent that that might be varied because of the necessities of contractual relations with foreign administrations and companies.

By Mr. Ende:

[1987] Q. I say: weren't you informed in 1946 by the Post Office Department of Portugal, that the exclusive rights under previous cable concessions which had been enjoyed by Radio Marconi had been abolished and the way was now open for a direct cable concession to Portugal? A. So far as I knew Radio Marconi never had any cable

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rights. As far as I can remember, the Portuguese Marconi never had any cable rights. It was purely a radio company.

Q. But there had been exclusive cable rights previously?

A. But the British had had exclusive cable rights.

Q. And these cable rights had been abolished by 1946?

A. And those expired, yes.

Q. You were further informed that the way was now open for Commercial Cable to have a direct cable connection to Portugal? A. Yes, that is true.

[1989] Q. You described your negotiations with the Dutch Administration in 1945 and early 1946. I believe you stated at about page 306 of the record that on June 8, 1946 the Dutch Administration advised that the terms suggested by your company were not acceptable. Then you stated:

“Subsequently, on September 19, 1946, the Dutch advised that if certain conditions were met it would agree to establish the circuit.”

Did any negotiations take place between you and the Dutch [1990] in the interim between June and September which led to that change of position of the Dutch? A. Mr. Spangenberg of our company was in Europe I think during that period, and he did have conversations with the various Dutch officials from time to time, as I remember it.

Q. Do you have any knowledge of what the particular negotiations were that caused the Dutch to change from being unwilling in June to being willing to consider it under certain conditions in September? A. No. As a matter of fact, I can't think of any change in the conditions which we offered, or which they accepted, during that period.

Q. Are you familiar with a letter written by Mr. Spangenberg dated June 29, 1946, to Mr. Forest L. Henderson, with respect to his negotiations with the Dutch? Do you have that letter before you now? A. Yes, I have a letter from Mr. Spangenberg, June 29.

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Q. Would you read the letter into the record please?
A. Yes. This is dated June 29, 1946 addressed to Forest L. Henderson as Executive Vice President, Mackay Radio and Telegraph Company, New York.

"Dear Forest: Here is a copy of memorandum 28 June 1946 re Holland. Since the traffic justification aspect of the proposed MRT circuit has been so emphasized [1991] I would think it important that the 'revenue to foreign administrations' report requested by my memorandum 3036-4 of June 25 be given special attention in the case of Holland. I think we will have to come up with a good substantial study showing the actual dollar advantages which will take into account:

- "(1) Estimated traffic volume and its value, less
- "(2) The taxes now collected by Holland, and
- "(3) Trans-channel participation, which should result in the real dollar advantage to the Administration. This is the sort of thing our friends will have to have in meeting opposition of their RCAC-WU minded colleagues.

Sincerely, L. Spangenberg."

Q. Attached to that letter was the memorandum referred to, and I call your particular attention to subparagraph 4 in that memorandum.

Would you read that please, and also any other parts that you might care to have in the record? [1992] A. Extract from memorandum for file dated June 28, 1946.

Q. Would you care to read it and see if you want to add anything to subparagraph 4? A. Subparagraph 4 states:

"The argument was used that the Dutch Administration got a larger participation from the radio traffic, and with MRT-Holland working we could,

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solicit contra WU, thus improving Holland's participation in the total business. At this point and for the first time I think Toorn mentioned some real national advantages to the MRT circuit and pressed for information as to how increased traffic could be secured."

[1998] Q. While the negotiations with the Dutch were continuing, did the AC&R companies receive information regarding the attempts of other carriers to secure direct radio circuits with Holland?

I am referring particularly to Press Wireless.

Did you receive any information that they were at that time also negotiating for circuits with the Dutch? A. I don't remember any.

Q. Would it refresh your recollection if I were to call your attention to a letter dated April 17, 1946 addressed to Mr. Forest L. Henderson, Vice President, American Cable and Radio Corporation, signed by J. Schoo, the last paragraph of which reads:

"It will furthermore interest you to know that Press Wireless are trying hard to obtain permission for direct circuit Holland-U. S. A."

A. That didn't come to my attention.

Q. Mr. Schoo further requested information regarding the position of the Mackay Company and the AC&R system in that matter. Do you know whether an answer was sent to Mr. Schoo? Will you refer to the last sentence, next to the last paragraph, of the document you are looking at?

[1999] Does that refresh your recollection? A. Well, it is in the message, so we sent it, but I don't remember it, I am sorry to say.

Q. Does the message indicate to whom copies of this message went, on the bottom thereof? A. Yes, it does.

Q. Are you included among the persons to whom copies of the message went? A. I prepared it.

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Q. Can you state now what the position of the AC&R and Mackay was regarding the application of other carriers to communicate with the Dutch by radio? A. I would take from this that we wished to emphasize to the Dutch that our service would provide them with a press service which would be equal to that provided by any other company, and would amply supply their needs.

Q. At the time these messages were sent, did Mackay have authority to communicate with Holland? A. I don't think so.

Q. Will you read the next to the last paragraph of the message signed by Mr. F. L. Henderson addressed to BVP for Schoo dated April 25, 1946? A. The next to the last paragraph?

Q. Yes, please. A. "As you know, we now operate Press-cast in addition [2000] to regular press service so that Mackay's press facilities are second to none.

"When joined to those of All America—the pioneer in special low rates for multiple address and volume press—they fully meet all requirements including coverage, speed, and accuracy of transmission, and rates, so there would appear to be no advantage to Holland from the establishment of an additional circuit for press."

[2001] Q. Do you have any evidence of customer demand for a Mackay circuit to any of the three points involved in this proceeding? A. What would that be? A direct request from customers?

Q. Have customers indicated that the service rendered by AC&R companies to these points is such that they would prefer a direct radio circuit? [2002] A. I can't recall any such direct request.

By Mr. Margraf:

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[2004] Were any negotiations carried out with Italcable since the end of the war looking toward the restoring of relations between Commercial and Italcable for Portugal traffic? A. Oh, yes.

Q. What was the nature of those negotiations? A. Well, the Italians have approached us and the Western Union and the RCA for a traffic agreement, distributing their traffic to the United States, among the three companies.

Q. You are talking now about traffic with Portugal? A. No. I thought you said Italcable.

Q. I did say Italcable but I was talking about Portuguese traffic. A. Yes.

Q. Restoring the relations which Commercial had with Italcable before the war? A. Italcable has made overtures to us in that respect.

Q. What has been Commercial's response to those overtures? A. We haven't responded.

Q. You have not said anything [2005] A. They have just been made and we haven't yet responded.

Q. When were those overtures made? A. When were they made?

Q. Yes. A. I would say maybe six weeks ago, five weeks ago.

Q. Is the Italian Cable open again now? A. Some parts of it are open. How much has been restored, I don't know.

Q. If Commercial made arrangements with Italcable to restore their relations which existed before the war, is there any reason then why a direct cable connection could not be consummated by Commercial and Italcable for traffic moving from the United States to Portugal—to Portugal and the other way? A. Of course those arrangements would not be nearly so satisfactory as the present arrangements with the Eastern because their route is not so good as the British route.

Q. It would be possible to have a direct cable connection, wouldn't it? A. So-called direct. With a relay at the Azores.

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Q. Couldn't there be an automatic relay at the Azores?

A. That I wouldn't know. I couldn't go into that.

Q. None of the problems which Mr. Henderson discussed would be present, would they, since Commercial would be the [2006] only one operating with Italcable?

A. I don't know that we would be the only one. I think Western Union also operates with Italcable.

Q. Has the possibility of entering again into relations with Italcable ever been thought of in connection with the direct cable circuit to Portugal? A. When you say "direct cable" do you mean this relay through the Azores?

Q. That is right. A. I don't think any very serious consideration has been given to it. It is not a good route. We don't consider it a good route. The British route is much better,—a superior route.

Mr. Wendt: If it is not a good route, Mr. McPherson, why did you abandon the Eastern in 1931 and go to the Italcable.

The Witness: We were forced to, you see. I mean, the Eastern started canvassing against us, really, when they were canvassing for the imperial routing, and to find an out we went to the Italians and the Italians agreed to give us not only our routed traffic but in addition, a portion of the unrouted traffic that they might get. They, not having a direct cable to the United States, had to dispose of their United States traffic so we had a share of that. We didn't invite it, I can assure you.

[2007] By Mr. Margraf:

Q. Does Italcable solicit in Portugal now? A. They have the right to. I don't know whether they have re-established their canvassing or not.

Q. The regulations with that company prior to the war enabled Commercial apparently to carry inbound from Portugal more than a third of the traffic handled between Portugal and the United States, despite the fact that you know,

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say, that that is not a good route. It was a successful route prior to ~~the~~ war, wasn't it? A. It was the best route that under the circumstances was available to us but it is not so good a route as the British route from the Azores to Lisbon.

Q. It was a route which enabled Commercial to handle inbound from Portugal in 1936, 31.9 per cent of the traffic, 1937, 39.9 per cent, 1938, 40.9 per cent? A. I am sorry if I have given the impression that our traffic from Portugal was limited to the traffic we received from Italcable, because as I tried to explain, we were still permitted during those years to have the double routing in Portugal—that is, Eastern-Commercial, and we were canvassing for traffic, and that accounted for most of our traffic, not what we received from Italcable.

Q. I understood you to say you changed your correspondent in 1931 from Eastern to Italcable. [2008] A. In changing our correspondent we did exchange traffic with Italcable and made them the company receiving our east-bound traffic at the Azores.

Q. Did you continue to receive traffic from Eastern also? A. Definitely. That which was routed via Eastern Commercial.

Q. Why would it not be possible to improve commercial's position at the present time by a similar arrangement, by making the dual arrangement with Eastern and Italcable? A. Because today we can't canvass for that routing. We can't canvass at all for it, and the Portuguese can't recognize the double routing of Eastern Commercial.

The only routings that are allowed today in Portugal are the routings of companies who have their communication facilities located in Continental Portugal.

Q. Doesn't that include Italcable? A. Italcable theoretically has a landing in Portugal. Whether it is restored or not is another question.

Q. If it isn't restored they were not in a very good position to resume overtures to you to resume the former relations we had? A. Exactly.

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Q. But they have made those overtures? A. Yes, they have.

[2009] Q. So there is a possibility that you could work with Italcable for Portuguese traffic? A. There is a possibility, yes.

Q. During the period when you did have such an arrangement, according to Exhibit 166, Commercial handled more than a third of the traffic inbound from Portugal? A. Yes.

Q. So, isn't it quite possible that Commercial might substantially improve its position if it sought to do so, to carry cable traffic by renewing its arrangements with Italcable? A. No, because as I say, we can't canvass in Portugal.

Q. But Italcable can? A. They can, yes.

Q. And Italcable could give Commercial a portion of the traffic which is— A. Of what they got, yes.

Q. And if that happened that would inure to the benefit of Commercial, wouldn't it? A. It would give us the benefit of our proportionate share of what Italcable could get in Portugal, that is true.

Re-direct examination by Mr. Gibbons (p. 1790, ll. 7 and 8):

[2017] Q. Now, to turn to another subject of yesterday, I believe Commission counsel invited your attention to a message that had been sent to the company's representative in Holland on April 5, 1946, the last paragraph of which made reference to the ability, as I recall it, of your company to provide press communication service between the United States and Holland. Would you turn to Exhibit No. 7, Item No. 196, at page 14 of Exhibit No. 7? It appears from that Item that on January 9, 1945, RCA was granted authorization to communicate with The Netherlands, and both Mackay Radio and Press Wireless were denied authorization. At the time Press Wireless applied here in early

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1945, apparently, for authority to communicate with The Netherlands, so far as you know, did Mackay oppose the grant of that application? A. No, it did not.

Q. For that matter, it did not oppose the grant of the [2018] RCA application, did it? A. No.

Q. That Item also shows that about a year later Press Wireless applied again for authorization to communicate with Holland on April 17, 1946, which application was granted. So far as you know, did Mackay at that time in early 1946 oppose the application of Press Wireless to communicate with Holland? A. No.

Q. Would you look at Exhibit No. 165, on the basis of which, I believe, you were cross examined yesterday by RCA counsel in connection with the relative positions of radio and cable operations from Holland. Now, looking at the RCA column at the top of the page for outbound traffic from the United States, first will you tell us who competes in the United States for traffic for Holland? A. Principally the RCA, Western Union, and the AC&R System.

Q. And apart from any conditions which might result from the merger of Postal and Western Union in 1943 and the application of the formula for the distribution of International traffic following that merger, would you say that the three companies compete on relatively equal terms in the United States for traffic to Holland and other places? A. Yes, I should say so.

[2019] Q. No one of the three companies is in a position, is it, to make a special appeal to the public in the United States on the basis of national interest? A. In general, no.

Q. In particular, can any one company make any appeal to the U. S. Telegraph user to patronize that company on the basis of some special national interest? A. Except that RCA might, of course, claim that using their circuit gives to the Holland government a share of the tolls.

Q. And the user who would be interested in this country might be the Dutch government representatives? A. Embassies and Legations.

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Q. But apart from that, no one company can make any general appeal to the telegraph user in the United States on the basis of any patriotic interest or national interests?

A. I should say not.

Q. Also, as far as you know, when traffic is brought into the United States by the International carriers and turned over to Western Union for delivery at points within the United States, is such traffic delivered on Western Union forms which have any express request or solicitation to patronize the Western Union cable route? A. No.

Q. They do not do that? [2020]—A. No.

Q. Now, looking at these outbound figures, under the competitive situation which you have generally described, it appears that for the year 1936, RCA carried about 25½ per cent of the outbound traffic to Holland, and for the first six months of 1947 it carried almost 30 per cent of the outbound traffic to Holland. Now, in the reverse direction, Holland to the United States, what is the competitive situation in Holland? A. The companies competing for the traffic from Holland to the United States?

Q. Yes. Let me ask you this. Does Western Union and Commercial Cable and Mackay Radio compete with RCA in Holland? A. No. They compete with Holland Radio.

Q. The Government communication agency? A. Yes.

Q. And according to the figures here for inbound traffic, that competition would appear to result, would it not, in RCA's receiving—take 1936—almost 46 per cent of the inbound traffic from Holland, and for the first six months of 1947, almost 52 per cent? A. Yes.

[2030] Q. Now, at pages 325 and 326 of the record, the question, I believe, was asked by Mr. Wendt requesting, as I recall it, that we endeavor to obtain more information concerning the practice of the Holland government in permitting refunds, telephone charges, and Telex rentals by the company operating in Holland. Have you had a further search made of your files to obtain some more information?

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A. Yes. I requested our representative abroad to secure and forward copies of the regulations then in effect governing this situation.

Q. Did you find in your files a letter of November, 1936, dealing with this subject? A. Yes.

Q. Is the document you have there a copy of the letter? A. Yes, it is.

[2031] Q. Now, following the request that we get some more information from Holland as to these practices, did you make inquiry of the Commercial Cable man in Holland to send you some original documents if he had any? A. Yes, through our London office.

Q. And what did you receive? A. I received copies of what appeared to be letters.

Q. Did you receive three letters in the Dutch language addressed to the Commercial Cable Company, one dated April 5, 1946, a second one dated August 29, 1946, and the third one dated January 3, 1947? A. Yes.

[2033] Q. What does Exhibit No. 138-C indicate? A. That shows that the customer whose volume equals at least 2,500 Florins worth of American traffic yearly is entitled to free local telephone lines for the offering and delivering of American telegrams.

Q. Then does paragraph 3 of that letter of August 29 refer to Telex operations? A. Yes. That says:

"Compensation can again be granted of half or the entire amount of Telex' expenses to consumers, who on basis of the respective regulations could be regarded as entitled [2034] to such."

Q. Now, reference is there made with respect to regulations. You were unable to obtain from your commercial office in Rotterdam the official regulations? A. No.

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Q. And what you know about the regulations and the practices, I take it, is what has been communicated to your office by the Rotterdam office or the London Vice-President?

A. That is right.

Q. Now, what does the letter of January 3, 1947, Exhibit for identification No. 138-D, indicate? A. That indicates the method by which the refund of the Telex rental may be made.

Q. Now, if a customer has a Telex machine in his office and uses it for communication with one of the communication agencies in Holland, and if he should by virtue of applicable regulations be entitled to a refund of the Telex rental, can the Commercial Cable or the Western Union in Holland refund directly to the customer the Telex rental?

A. No. Apparently the customer must pay his rental, and then the cable company makes the refund after it proves the customer is entitled to it, to the PTT, which, in turn, makes the refund to the customer.

Q. And it appears that the cable company is not permitted to have direct access to the customer for that purpose under [2035] these regulations? A. That is true.

Q. There was testimony, I believe, with regard to the operation, pre-war, of the Commercial Cable Company of a leased line from Rotterdam to Amsterdam, and some question as to whether or not that has been resumed. Can you give us any information on that score? A. Previous to the war, the company did have a leased wire connection between its office in Rotterdam and the Post Office in Amsterdam.

Q. That is, the wire ran not into the Commercial Cable office in Amsterdam, but to the Post Office in Amsterdam?

A. To the Post Office. It was discontinued, of course, at the outbreak of the war, and has not been resumed.

Q. In your judgment, was it an effective or wholly satisfactory way of serving Amsterdam by Commercial Cable Company? A. No, because it was not a service to the customer, and did not in any way assist us in improving our service to Amsterdam.

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[2048] By Mr. Gibbons:

Q. To return to the London circuit again, Mr. Cearley of RCA testified that upon the opening by Mackay of its circuit with London, it made a divisional settlement arrangement with Cables and Wireless which was different from that relating to Cables and Wireless and RCA, and as I recall his testimony he said that that resulted to the detriment of RCA. Now, you said you were familiar with negotiations for the London circuit. A. Yes.

Q. What was the basis of your arrangement with Cables and Wireless for the division of tolls and settlement of accounts?

[2051] A. May I answer the question by reading from a message I sent to Sir Edward Wilshaw, Chairman of Cables and Wireless?

Q. On what date was that? A. January 15, 1943. I stated:

"Based upon conversations with you and Major Monroe last Spring, it is my understanding that the circuit will be operated under the following conditions: . . .

"2. Equal division of tolls after our payments.

"3. Accounting and settlements on same basis as govern your present arrangements with RCA."

Q. Now, what reply did you receive from London, and specifically only with reference to the proposal you just read relating to division of tolls and accounting settlement arrangements? [2052] A. In a message dated March 6, 1943, signed "Edward Wilshaw, Chairman, Cables and Wireless, Ltd.", paragraph number 2 states:

"Division on RCA circuit is two-thirds-one-third of deduction terminal and/or transient taxes, and it

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seems most desirable for same conditions in all respects to apply to both Mackay and RCA circuits; this would also facilitate division of traffic between two circuits.

"3. I agree that our accounting and settlements shall be on the same basis as govern RCA New York-London circuit. On RCA circuit, we account on basis of sterling collections on westbound traffic and on basis of dollar collections on eastward traffic, the accounts being set up in gold francs 5.1825 equals One Dollar or francs 25.221 equals one pound sterling; the balance of accounts being settled at the rate ruling at the time (that is to say, \$4.03 equals 1 pound sterling)."

Q: Now, is that the proposal or are those the terms you agreed to with Cables and Wireless for the operation of the Mackay London circuit? A: Yes.

Q. Did it thereafter develop that the settlement arrangement with RCA set forth by Cables and Wireless in the message you just read from was not the RCA construction of its arrangement with Cables and Wireless? [2053] A. Yes, there was a difference of opinion between the two.

Q. And is not a fact that that difference which arose between Cables and Wireless and RCA was the subject of a proceeding here before the Commission? A. Yes.

Q. Mr. Cearley also testified on direct examination, as I recall it, that RCA operated a circuit with the Egyptian Company between Cairo and New York on a basis which called for a 50-50 division of tolls? A. Yes.

Q. And he further testified, as I recall it, that Mackay made an arrangement with the Egyptian Company for a $\frac{2}{3}$ - $\frac{1}{3}$ division of tolls. Do you recall that? A. No. Originally the arrangement was the same.

Q. All right. Will you state what the original arrangement was between Mackay and the Egyptian Company for operation of the Cairo circuit and tell us about any change

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that took place in that arrangement? A. The original arrangement was on the basis of a 50-50 division.

Q. Was the arrangement and change in the arrangement set out in a letter to the Federal Communications Commission? A. Yes, dated March 31, 1943.

Q. Will you state what that letter to the Commission said [2054] with regard to Egypt? A. The letter states that our arrangement with the government Egypt was originally made on the basis of a 50-50 division of tolls, and that no changes have as yet been effected concerning this agreement.

“However, we agree to a change in this arrangement to become effective April 1, 1943, whereby the transmitting carrier will retain $\frac{2}{3}$ of the tolls and will remit $\frac{1}{3}$ to the receiving carrier.”

At the request of the Egyptian government, Mackay radio agreed to this arrangement for the reason that the change was advantageous to our company. The volume of messages which Mackay Radio handles from Egypt is greater than the volume of messages to Egypt, but to the contrary, the volume of words is greater outbound from New York than inbound to New York. During the last quarter of 1942, if the $\frac{2}{3}$ - $\frac{1}{3}$ division had been in effect, Mackay's revenues from the Egyptian circuit would have been increased by \$3,373.

It is, therefore, apparent that the change was distinctly advantageous to Mackay.

Q. Is it your understanding that at the time that Mackay agreed to the changed division in Cairo, that Mackay believed that RCA had agreed to a similar change? A. It was our impression.

Q. They had [2055] A. Yes.

[2058] Q. Mr. McPherson, you testified a few minutes ago that as the record here shows, by reference to the RCA

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London contract, in 1937, RCA changed its 50-50 divisional arrangement with London to a $\frac{2}{3}$ - $\frac{1}{3}$ divisional arrangement. Do you know whether or not at the time that measure was taken, it was a step detrimental to or of advantage to the American communications industry?

The Witness: I believe it was a disadvantage to the industry.

Mr. Werner: Why do you believe that?

By Mr. Gibbons:

Q. What was the answer? A. I said, I believe that was to the disadvantage of the [2059] industry.

Q. The industry engaged at that time in radiotelegraph communication between the United States and the United Kingdom was represented by what carriers? A. RCA only.

Q. The only carrier? A. Yes.

Q. Now, Mr. Cearley also testified on direct examination—

Mr. Werner: May I ask him on what basis he arrived at that conclusion?

The Witness: Because of the volume of traffic eastbound and westbound.

By Mr. Gibbons:

Q. Are you familiar with the volume of radio traffic moving eastbound and westbound between the United States and the United Kingdom in 1937? A. My recollection is that the westbound was in excess of the eastbound.

Q. The westbound was in excess of the eastbound? A. Yes.

Q. So that change from a 50-50 division to a $\frac{2}{3}$ - $\frac{1}{3}$ division meant that the transmitting station received $\frac{2}{3}$ of the toll, I take it, and the receiving station $\frac{1}{3}$? A. That is my understanding of it.

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Q. And if the transmitting station in London was sending [2060] more traffic to the United States than was the reverse situation, then that change would have been advantageous to the London transmitting station. Is that the effect? A. It would have been.

[2061] Q. Now, Mr. Cearley testified also on direct examination that, as I recall it, RCA had an arrangement with Japan for the accounting and settlement of messages handled on the Japanese circuit and that Mackay Radio thereafter came along and made some different arrangement with the Japanese administration. Can you tell us when Mackay attempted communication between the United States and Japan? Was it sometime in 1933, 1934 or 1935? A. I think so.

Q. Can you give us any information as to what differences, if any, existed between the arrangement Mackay made with the Japanese administration and the arrangement that RCA had in [2062] effect with the administration? A. The arrangements were the same; that is to say, it was a 50-50 division of tolls, less terminal. But it developed that the terminal, for the first zone out of San Francisco paid by RCA, was 4 cents to the Western Union, whereas the terminal paid by Mackay for the same zone to Postal was 2 cents.

Q. So that at the time Mackay entered into its arrangement with the Japanese administration, it deducted before division of radio toll a 2-cent terminal which it paid the Postal for San Francisco area service, is that correct? A. Yes.

Q. Did Mackay have any knowledge at the time it entered into its arrangement with the Japanese administration that RCA was paying some different terminal to Western Union? A. I believe not.

[2069] Q. The big cable companies had a combined

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total of approximately 60 per cent of the total inbound revenue from Holland for the first six months of 1947?

A. Yes, if the figures that you quoted are right.

Q. Now, don't those figures indicate that the cable companies are able to do very well for themselves in the face of whatever commercial practices might exist in Holland, as compared with a radio carrier? A. There are two carriers exerting their utmost as against the Holland radio.

Q. But they are both subject to the same disadvantages, if there are any disadvantages at all, resulting from the Holland Radio's commercial practices, are they not? A. Yes, equally.

Q. So in the aggregate, all the cable traffic is subject to whatever disadvantages there might be? A. That is true.

Q. Yet despite that, the cable companies during the first six months of 1947 obtained approximately 60 per cent of the total revenue? A. Yes.

[2103] ALFRED A. HENNINGS, a witness called on behalf of American Cable & Radio Company, having been previously duly sworn, assumed the stand and testified further, as follows:

[2152] *Re-direct examination by Mr. Hartman:*

Q. Mr. Hennings, Mr. Hawkins asked yesterday concerning the outpayments or net to Mackay and Commercial on traffic destined to twelve different countries. I believe there were twelve. I understand that you have prepared those and ready to read them into the record. Would you do so, please?

[2154] A. All right. I would like to start reading them all over again, reading the outbound and the inbound for each country, for the sake of completeness.

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Belgium, outbound, via CCC, Paris, .235; via MRT, London, outbound, via CCC, Paris, .235; via MRT, London, .174. Inbound via CCC, Paris, .294; via MRT, London, .068.

Denmark: via MRT, direct, outbound, .251; inbound, .065. Via CCC, London, outbound, .156; inbound, .277.

Finland: via CCC, London, outbound, .096; inbound, .267. Via MRT, London, outbound, .112; inbound, .065.

France: via CCC, direct, outbound, .228; inbound, .294; via MRT, direct, outbound, .128; inbound, .168.

Germany: via MRT, direct, outbound, .175; inbound, .125. via CCC Paris, .1983; inbound, .1483.

Hungary: via MRT direct, outbound, .138; inbound, .178; via CCC, London, outbound, .114; inbound, .1535.

Italy: via MRT, direct, outbound, .175; inbound, .125. via CCC, Azores, outbound, .164; inbound, .1152.

Norway: via CCC, London, outbound, .158; inbound, .25. via MRT London, outbound, .134; inbound, .062.

[2155] Spain: via MRT, direct, outbound, .13; inbound, .17. via CCC, Azores, outbound, .13; inbound, .17.

Sweden: via CCC, London, outbound, .1703; inbound, .21. via MRT, London, outbound, .1692; inbound, .0542.

Switzerland: via CCC, London, outbound, .178; inbound, .224. via MRT, London, outbound .142; inbound, .068.

Union of South Africa: via CCC, London, outbound, .1325; inbound, .1325. via MRT, London, outbound, .1017; inbound; .0708.

USSR: via MRT, direct; outbound, .13; inbound, .17. via CCC, London, outbound, .155; inbound, .194.

United Kingdom: via CCC, direct, outbound, .25; inbound, .15. via MRT, direct, outbound, .17; inbound, .074.

Eire: via CCC, direct, .233, outbound; inbound, .133; via MRT, London, outbound, .168; inbound, .073.

Mr. Hawkins: Would you state the one for Spain again?

The Witness: Yes.

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Spain: via MRT, direct, outbound, .13; inbound, .17. via CCC, Azores, outbound, .13; inbound, .17.

[2156] Mr. Hawkins: I have just one question.

Don't these divisions show that to these countries which constitute the principal countries of Europe, that that retention via Commercial Cable is greater than via Mackay, in most cases?

[2157] The Witness: Yes. I would just like to look at this a moment before we get away from that question.

In the majority of cases, it shows a greater retention via the cable route.

[2172] By Mr. Hartman:

Q. Does Commercial Cable have its own facilities any place other than Holland, England, France, the Azores, Canada and Belgium? A. No.

[2175] Q. But to get back to the coastal countries of Europe, Mr. Hennings, and the danger of diversion of Commercial Cable Company traffic, would you look at Belgium, on the routing **[2176]** study, page 3? A. Yes.

Q. How is Commercial Cable traffic handled in Belgium? A. It states, "CCC direct."

Q. How does Mackay handle its traffic to Belgium? A. It transfers it to Commercial Cable Company at New York.

Q. That, of course, could be transferred at London; I mean, transferred to C&W in London? A. No, we do not send it via London. We give it to Commercial Cable.

Q. What I am asking is whether it could be? A. It could be, yes.

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Q. Now, let us look at the Netherlands, page 10. What are the respective CCC and MRT routings shown? A. CCC direct; MRT via CCC, New York.

Q. Now, with respect to the Azores, on page 2, what are the normal routes of the CCC and Mackay? [2177] A. Azores, CCC direct; MRT transfers it to CCC at New York.

Q. To the best of your knowledge, is there any coastal country which Commercial can reach through its own facilities to which it diverts routed traffic to Mackay except in the case of emergency diversion? A. I do not know of any such case. I doubt it very much.

[2183] BERTRAM B. TOWER was recalled as a witness for and on behalf of American Cable & Radio Corporation and, having been duly previously sworn, was examined and testified further, as follows:

[2192] *Cross examination by Mr. Hawkins:*

Q. Mr. Tower, will you refer to Exhibit 153, page 3, of that exhibit?

This exhibit shows, does it not, that in 1947, Mackay received a loan of \$2,000,000? A. That is right.

Q. That was advanced from Mackay's parent company, A. C. & R.? A. Yes, sir.

Q. When was the \$2,000,000 advanced to Mackay? [2193] A. I think most of it was advanced—You mean what month?

Q. Yes. A. It was advanced throughout the year. I think most of it was advanced in the first six months of 1947.

Q. Now, would you refer to page 4 of the same exhibit, the income statement of AC&R? Is it true that this exhibit,

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shows in 1947 All America Cables & Radio paid a dividend of \$1,325,000? A. Yes, sir.

Q. Was that a cash dividend? A. It was.

Q. Was it paid from current earnings? A. Not completely. Part of it was paid from earnings in the previous year.

Q. From surplus? A. It was paid out of earned surplus. The dividends are paid out of earned surplus.

Q. And what was the purpose of the dividend by All America? A. To provide the parent company with funds with which to advance money to Mackay Radio.

[2199] Q. Then, to the extent that All America's dividends were used to make loans to Mackay, then revenue from cable operations have been used to subsidize Mackay radio operations? A. I do not look at it that way at all. We are operating an integrated cable and radio system. We are the three companies in a group, one company helping the other.

Q. But the company that helped the weaker of the two was able to do so because of net operating revenues from cable operations, principally? A. All America was our only profitable carrier.

Q. And most of its net operating revenue came from cable operations? A. I would say that the majority of it came from [2200] cable operations.

Q. And the operating revenue from cable operations largely subsidized Mackay's losses? A. I do not think there is any subsidization involved at all in the matter.

Q. Can we agree that that money was used to pay the losses without regard to terminology? A. I do not think it was used primarily for paying the losses of Mackay.

Q. How was it used? A. The funds advanced by the parent company to Mackay were used primarily in our plant modernization improvement program in 1945, 1946 and 1947.

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[2203] Q. On Exhibit 153, page 3, at the middle of the page, there is indicated that during 1946 Mackay received a loan of \$2,200,000? A. They did.

Q. Were the terms of that loan the same as in the 1947 loan? A. Exactly.

Q. What was the source of cash to make this advance to Mackay? A. In general, I would say the source was the funds of the parent corporation, the All American Cable & Radio.

Q. Obtained as a result of dividends paid over the years to AC & R? A. By its subsidiaries, in general; yes, that is true.

Q. And during the years All America has been the most profitable subsidiary of AC&R? A. Commercial Cable had profits in the war years.

Q. Did Commercial Cable Company pay any dividends? A. I do not believe they did.

Q. Did Mackay pay any dividends? A. I do not believe they did.

Q. So the dividends that were paid came from All America? A. And SARA.

[2204] Q. Do you know to what extent dividends were paid by SARA? A. And also CPC, I believe.

Q. To a very limited extent? A. To a very limited extent.

Q. So again, the money came largely from cable operations during the years? A. The moneys came from the parent corporation, the American Cable & Radio.

Q. Yes. I think the record is clear on that. But where did the parent company get the money? A. The parent company got its money primarily from dividends from its subsidiaries.

Q. And where did its subsidiaries get the money? A. From operations.

Q. Cable operations, primarily? A. Cable and radio operations.

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Q. Primarily cable operations? A. Yes, sir; primarily cable operations.

[2265]

By Mr. Hawkins:

Q. Now, at page 387 of the record you were discussing Exhibit 156, and you made the statement, "Clearly the radio carriers enjoy a much more advantageous position inbound than do the cable carriers." A. Pardon me. I do not follow that.

[2266] Q. It starts at the bottom of page 378. A. Exhibit 156, you said?

Q. I am sorry. Exhibit 162. The statement beginning at the bottom of page 387 is, "Clearly the radio carriers enjoy a much more advantageous position inbound than do the cable carriers. This undoubtedly is due to the interest which many foreign governments have in their radio facilities, with no comparable interest in cable facilities," and so forth.

Is that statement true with respect to Central and South America? A. If at all, to a much lesser extent than to the Atlantic area.

Q. You do not know whether it is true or not? A. I would say from certain countries it would be.

Q. Do you have a copy of Exhibit X-7, which was incorporated by reference? A. I do not have it with me, no.

Q. I think it has been incorporated by reference in this case. I am sure of that. A. I think so.

Q. Do you have a copy of it? A. I do not have a copy of it.

Q. Referring to Exhibit X-7 in Docket 8230, which was incorporated by reference in this case, on page 16 of that exhibit for inbound terminating traffic from the West Indies, [2267] Central, North and South America, the exhibit shows that the radio carriers handled a total of

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about 11,700,000 words. On page 17 of the same exhibit, it appears that the cable carriers for the West Indies, Central, North and South America, handled almost 19,000,000 words of traffic terminating in the United States.

For inbound transit traffic, the exhibit shows that the radio carriers handled about 4,000,000 words inbound, and the cable carriers 10,000,000 words inbound.

Now, do those traffic statistics indicate or show that so far as Central and South America are concerned, the cable carriers handled twice as much inbound traffic as the radio carriers? A. These figures show that.

Q. So that your conclusion would not be true regarding Central and South America? A. My conclusion related to the over-all telegraph traffic, world-wide.

Q. Is it fair to draw a conclusion on a world-wide basis? A. I believe it is. With these facts, my conclusion would seem to make the predominate radio position, inbound, from the areas of the world much more important.

Q. Is it true that what advantage, if any, there may be radio carriers or cable carriers depends upon the particular [2268] country of the world? A. This is in the entire area, which has had extensive coverage by cable, long before radio was ever heard of.

Q. And in that particular area, the cable has a material advantage over radio, with respect to inbound traffic? A. I would not say that.

Q. Don't your figures show that? A. There is much more traffic inbound, cable-wise, than by radio.

Q. That was the same type of reasoning on which you based your other conclusion in your testimony? A. There is much more direct coverage by cable in South America than there is by radio.

Mr. Hartman: May I ask one clarifying question, Mr. Hawkins?

Mr. Hawkins: Surely.

Mr. Hartman: Do you know whether or not in South America most of the inbound traffic to the

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United States is transmitted by government monopolies, or is it a competitive situation within the South American field, for traffic outbound from South America?

The Witness: It is primarily a competitive situation in South America.

Mr. Hartman: And most of Mackay's correspondents in South America are private companies; is that true?

[2269] The Witness: Yes; they are.

Mr. Hartman: Competing with other private companies out of South America?

The Witness: Yes, sir.

Mr. Hartman: And All America's cable system is in no wise controlled by the foreign administration other than through concessions; is that true?

The Witness: At the present time, that is true.

Mr. Wendt: Can't we conclude from that, Mr. Tower, that where we do not have these government monopolies in foreign administrations the cables can usually do better than the radio?

The Witness: Where they have been in for some time; I think that is a fair conclusion at the present time.

Mr. Wendt: The same situation to which Mr. Hawkins referred, with respect to the preponderance of cable inbound traffic, also exists in the United Kingdom, does it not?

The Witness: I believe it does.

Mr. Wendt: And France?

The Witness: I do not know about France.

By Mr. Hawkins:

Q. With respect to the principal maritime countries of Europe the cables handle most of the inbound traffic, do they not? U. K., for example, the United Kingdom? A.

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I believe that is true on U. K. I am not sure on [2270] the other countries. I do not know the figures.

Mr. Wendt: What about Holland?

The Witness: Pardon me?

Mr. Wendt: What about Holland?

The Witness: Inbound radio from Holland exceed inbound cable traffic.

By Mr. Hawkins:

Q. It is about a fifty-fifty split, is it not? A. In the first six months of 1947, the radio inbound was 51.5 per cent, and the cable inbound was 48.5 per cent. All of the inbound radio was handled by RCA.

Q. Now, is it not true that the cables handle most of the inbound traffic from France, for example? A. I do not know. I do not have the figures, Mr. Hawkins.

Q. Exhibit X-7, pages 2 and 3, indicate that inbound radio handles 8,300,000 words, and inbound cable handles 4,330,000 words. Do you have any information on Belgium? A. I do not know.

Q. The same exhibit indicates that the radio handles about 1,000,000 words inbound and the cable handles 1,800,000 inbound.

U. K., the radio handles inbound about 4,000,000 words; the cables handled inbound 23,000,000 words.

Mr. Hartman: May I ask, Mr. Hawkins, what are the periods [2271] you are using?

Mr. Hawkins: The first six months of 1947. I think it is the same.

By Mr. Hawkins:

Q. Don't the traffic statistics indicate, Mr. Tower, that in many cases throughout the world the cable carriers have a material advantage on inbound traffic? A. In the instances that you have cited, cable traffic has exceeded radio traffic inbound to the United States.

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Q. Is it not true that radio carriers have handled a large part of their traffic from such countries as China, Russia, and places like that, where inbound cable service is somewhat limited? A. Where there is a strong national competitor, the radio traffic inbound does in most cases materially exceed the cable.

Q. Now, is it not true that it depends on the facilities available in the particular country? If there are direct cable facilities inbound, as in France, the United Kingdom, and countries of South America, cable does handle most of the traffic under those circumstances? A. Facilities have something to do with it.

Mr. Wendt: Subsidies have something to do with it, too, do they not, Mr. Tower?

The Witness: I would say so. The position of the [2272] privately operated companies is another factor.

By Mr. Hawkins:

Q. But generally where the cable companies operate and have cable connections, they do very well on inbound traffic?

A. We believe we have done well where we operate directly.

Q. Then your conclusions are drawn from an over-all picture and should be qualified to that extent? A. From the picture presented in Exhibit No. 162, which is the world-wide picture, to me it is evident that the radio carriers still enjoy, over all, a better position on inbound traffic.

Q. But to many areas of the world and many countries of the world, that is not at all true? A. There are exceptions. This is an over-all picture.

Q. So that by taking the results that you have taken, if the traffic volume to certain countries like China, Russia, and places in Asia, should be unusually high— A. And The Netherlands and Portugal?

Q. (Continuing)—should be unusually high from those countries that lack cable connections, it would tend to distort the conclusion on a world-wide basis? A. It would

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even make the radio position even greater on inbound traffic.

Q. Of course, that radio position would be required to [2273] offset the very material advantage that the cable companies have in other areas. A. There is a great deal more investment involved in cables, too.

Q. There are many exceptions throughout the world? A. There are some exceptions, but from an over-all standpoint, I think my statement is a good statement.

[2274] Q. Mr. Tower, do you recall Mr. McPherson's testimony about AC&R's contract obligation with the Holland PTT? A. With respect to traffic?

Q. Yes. A. Yes.

Q. Would you state what that is? A. As I understand it—I believe it is in the record—as a matter of fact, I haven't read it in the contract itself—but as I understand it, the AC&R system guarantees 50 per cent of the combination Mackay and Commercial traffic to and from Holland.

Q. With respect to traffic—to Holland? A. I am not sure.

Mr. Hartman: Do you have any objection, Mr. Hawkins, to his seeing the agreement, in case there is any question?

A. Mackay will transmit all of its traffic destined to Holland and all traffic of the Commercial Cable Company [2275] destined to points in Holland excluding Rotterdam and not otherwise routed and guarantee that the volume of traffic transmitted over any twelve months' period shall not be less than 50 per cent of the total volume of traffic within control of Mackay and Commercial, destined to all Holland, including Rotterdam.

By Mr. Hawkins:

Q. Do you know what percentage of the AC&R traffic is destined to areas outside Rotterdam? A. On the basis

Bertram B. Tower, for Intervenor—Cross.

of a recent study that I had made, a little under 50 per cent of the traffic handled by Commercial Cable was destined to points outside Rotterdam.

Mr. Wendt: 50 per cent of what—messages, words, or revenue?

The Witness: Messages.

By Mr. Hawkins:

Q. What period of time does that study cover? A. It took three different days in May.

Q. 1948? A. 1948.

Q. There is testimony in the record now indicated that the percentage should be about 70 per cent, isn't that true?

A. I don't know whether that is true or not. I heard some testimony about 70 per cent but I don't recall just exactly what that testimony was.

[2276] Q. Will you refer to Exhibit 128? Does the guarantee refer to messages, words or revenue? A. It just says traffic, as far as I can see. I can't find any other.

Q. Was your study based on words or messages? A. Messages.

Q. Do you know whether or not this figure in Exhibit 128 is based on words? A. Which figure are you referring to?

Q. The fourth paragraph? A. I have no idea what this figure is based on—whether it would be words or messages.

Q. There was a correction in the exhibit there. As I understand it now it should read 70 per cent of the total eastbound traffic destined to Holland handled by both these companies during the month of August last was destined to points in Holland outside of Rotterdam? A. This has been corrected?

Mr. Hartman: Yes, it has. The correction is not in your copy.

Q Mr. Hawkins: The part that I read was not corrected, was it?

Bertram B. Tower, for Intervenor—Cross.

The Witness: I don't know what change has been made, if any.

By Mr. Hawkins:

[2277] Q. The part that I read, there was no need for correction, as I understand it, is that right?

Mr. Hartman: I have forgotten offhand what the first part of the corrected sentence was, Mr. Hawkins.

Do you have the full sentence before you?

By Mr. Hawkins:

Q. Do you know what figure was submitted to the Dutch Administration? A. I beg your pardon, Mr. Hawkins.

Q. Do you know whether the 70 per cent figure was submitted to the Dutch Administration? Apparently it was according to Exhibit 128. A. It would appear to be addressed to Mr. Neher, Postmaster General.

Q. Can you in some way reconcile these two apparently conflicting figures—the one you have given and the one you submitted to the Dutch? A. The letter says, "Approximately 70 per cent of the total eastbound traffic destined to Holland handled by both companies during the month of August last was destined to points in Holland outside of Rotterdam."—

Mr. Hartman: What year was that?

The Witness: That was 1946.

A. (Continuing)—whereas my study for three days was based on the period in May 1948.

[2279] Q. Do you recall a memorandum from Mr. Spangenberg to Mr. Henderson dated June 29, 1946 which was read into the record at page 1768?

This memorandum states:

Bertram B. Tower, for Intervenor—Cross.

"Dear Forest: Here is a copy of memorandum 28 June 1946 re Holland. Since the traffic justification aspect of the proposed MRT circuit has been so emphasized I would think it important that the 'revenue to foreign administrations' report requested by my memorandum 3036-4 of June 25 be given special attention in the case of Holland."

Have you any information as to whether the figures requested by Mr. Spangenberg are incorporated in the letter [2280] of October 24, 1946, Exhibit 128? A. I really don't know. If I had anything to do with it I don't recall it.

Q. The situation is that apparently you promised the Dutch that they would get 70 per cent of the traffic? A. I don't understand it that way.

Q. 70 per cent of the— A. I believe I read the correct version of that letter just a few moments ago.

Mr. Gibbons: Would you look at Exhibit 128 and see if that reference to the 70 per cent is a promise of traffic or a reference as to how traffic was distributed in the month indicated?

The Witness: In the copy of the original that I just read, as I recall it indicated that the 70 per cent referred to the traffic which was actually handled during the month of August 1946. It had no relationship to the 50 per cent guarantee so far as I know.

By Mr. Hawkins:

Q. The 50 per cent guarantee—the 70 per cent would be the amount that you would have transmitted over the Mackay circuit in August if the Mackay circuit were in operation? A. I don't follow you at all on that, Mr. Hawkins. The statement says that "70 per cent of the total eastbound traffic destined to Holland by both the companies during the [2281] month of August last was destined to points in Holland outside of Rotterdam."

Bertram B. Tower, for Intervenor—Cross.

Q. And you propose to transmit over the radio circuit all traffic to points outside Rotterdam? A. I don't believe so. I believe any traffic specifically routed over Commercial Cable will go over the direct cable circuit to Rotterdam.

Q. As much as necessary will be diverted to make up the guarantee of 50 per cent? A. We don't think there will be any such necessity.

[2314] By Mr. Werner:

[2316] Q. O. K. We won't go into that line of questioning any further. I believe you stated in answer to a question asked of you by Mr. Hawkins, that on the basis of a recent study, a little less than 50 per cent of the messages destined to Holland are to places other than Rotterdam.

Does that not indicate that in order to make up for the 50 per cent guarantee, and assuming, for the purposes of this question, the guarantee is based on messages, that there will have to be some diversion of traffic from the cables to the radio? A. Well, assuming this is all the traffic we are going to handle—the traffic presently in the control of AC&R—that might be a fair conclusion, but we expect to be able to produce additional business with the direct circuit.

Q. Might not the additional business be produced in the same proportion as it is presently being handled, namely, a little less than 50 per cent of the additional business [2317] will be going to places other than Rotterdam? The additional business might not change the proportions on the destinations of the traffic? A. The 50 per cent relates to the direct circuit.

Q. 50 per cent as I understand it is 50 per cent of all the traffic handled by the AC&R system destined to Holland will go over the radio circuit? A. Yes, sir.

Bertram B. Tower, for Intervenor—Cross.

Q. Your study indicates that a little less than 50 per cent of traffic now handled by the AC&R system goes to points other than Rotterdam? A. Yes.

Q. My question is: in that case won't it be necessary to divert some of the traffic from the cables to the radio in order to make up the guarantee, or pay the guarantee out of your pocket? A. I think with the new circuit we will get some greater volume of traffic to Amsterdam and points outside of Rotterdam and traffic via Mackay Radio.

Q. Do you have any assurance that any increase in traffic that you would get, that more than 50 per cent of that amount would go to places other than Rotterdam? A. Well, the only traffic we had to handle to Rotterdam is traffic, as I understand it, as I recall, traffic routed specifically via Commercial Cable Company.

[2318] Q. Let me give you an example and maybe you will be able to answer my question a little easier. Let's assume that your study showed a hundred messages going to Holland, 45 of which went to places other than Rotterdam, 55 went to Rotterdam.

Now your testimony is that you believe that in the event the direct circuit is granted to Mackay you will increase your traffic to the Netherlands.

Let's assume that that actually would occur and you would get an additional hundred messages by diversion. Is there any assurance that the hundred messages will not be in the same proportion as presently, namely, in my example, 55 per cent to places other than Rotterdam and 45 to Rotterdam? You would still have to have a diversion. A. There is no definite assurance, but that hundred messages may be entirely handled by Mackay Radio over its direct circuit.

Q. The messages that you receive for Holland will be either for Rotterdam or places outside of Rotterdam? A. Right.

Q. Presently a little over 50 percent of the messages going to Holland are for Rotterdam, is that correct? A.

Bertram B. Tower, for Intervenor—Cross.

Q. Any increase in traffic for Holland may very well have the same proportions—that is, a little over 50 percent of any increased traffic may be going to Rotterdam, too? [2319] A. It may be, very well.

Q. In that event, there may be some diversion from the cable to the radio in order to make up that 50 percent guarantee unless you pay it out of your pocket. A. Unless that traffic goes over the direct circuit.

Q. But the routing practice, as I understand it, in the AC&R system, is that all Rotterdam traffic would be via cables whether it is routed via Commercial Cable or not. Is that correct? A. If it is routed via Mackay it will go over the direct circuit. A message routed via Mackay Radio to Rotterdam will go over the direct circuit.

Q. Correct. A. If these hundred additional messages are routed via Mackay Radio, they will go over the direct circuit. If they are routed via Commercial Cable, there might possibly be required a diversion from cable to radio.

[2364] Q. Are you aware, Mr. Tower, that in 1942, the radio companies, by order of the Commission and the Board of War Communications, went out of the domestic telegraph field? A. Yes, it did. I am aware of that.

Q. And since that time have not engaged in domestic telegraph operations? A. That is true.

Q. You are aware also, I assume, of the merger of Western Union landlines and the Postal system in 1943—I believe it was in October 1943. A. I am.

[2365] Q. Do you understand that the legislation which permitted the creation of the Western Union-Postal merger was voluntary legislation which permitted rather than required a consolidation? A. That is my understanding.

Q. I understand that during 1946 and 1947, Mr. Tower, this Commission granted to the Western Union landlines several rate increases. Is that true? Are you familiar in general with the Commission's orders in those cases? A.

Bertram B. Tower, for Intervenor—Cross.

Yes, I am. As I recall, they did grant several rate increases to the landline company.

[2367] Q. Mr. Tower, will you use Exhibit 163 and 163-A to indicate as between the two companies of the AC&R system, what the situation is as to traffic by the different categories, public, government, press and greeting? A. Taking the public class first, it will be noted on Exhibit 163-A that during the period 1944 through the first six months of 1947, All America has increased its public traffic from 32 million in 1944 to almost 29 million in the [2368] first six months of 1947, or approximately doubling that figure will be 57 million, or an increase of 25 million words.

Commercial Cable has increased, in the public class, from 19 million to around 42 million on an annual basis, doubling the 1947 figure—an increase of 23 million words. Mackay has increased from almost 20 million in 1944 in the public class, to around 75 million; an increase of some 55 million words.

Q. Now, will you indicate for government the situation that these exhibits reflect? A. Both All America and Commercial you will note have dropped in their volume, particularly Commercial Cable. You will note that Commercial Cable handled 59 million words in 1944 in the government class, and in the first six months of 1947 it had dropped down to 3,800,000. Mackay on the other hand remained about constant throughout the period in the government classification—9 million in 1944 and around 8,600,000 on an annual basis, using the 1947 figures as shown there.

Q. Do these exhibits reflect that there has been any substantial diversion of government traffic from the Commercial Cable Company to Mackay? A. I certainly wouldn't think so. I think the government traffic has just disappeared. It was war-time traffic, [2369] particularly Commercial Cable Company, and this traffic has practically disappeared.

Bertram B. Tower, for Intervenor—Cross.

Q. But it does appear that the Commercial Cable has increased substantially in the public class, and that the drop in traffic which it has experienced has been in the government class, is that correct? A. That is true.

Q. Would you indicate roughly the ratio of public increase as between 1944 and 1947 and the first six months projected for the three companies of the AC&R system and for all radiotelegraph carriers combined, exclusive of Mackay? A. Commercial Cable Company, public class, is more than double in the period covered. Mackay Radio has increased about $3\frac{1}{2}$ times in the public class. All America has—its increase is a little less than double the 1944 figure. All radio carriers, excluding Mackay, has about doubled in volume.

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 [2372] Q. Mr. Tower, questions were asked at page 2036 of the record, in your cross examination, as to whether or not it was a fact that as to certain points now the traffic which is routed via CC or for which CCC at one time might have been the normal route for AC&R traffic, is now being routed via Mackay. I will ask you to refer to Exhibit 3, please, and indicate what that exhibit shows to be the normal route for traffic to Australia shown on page 2? A. This Exhibit indicates that the normal routing to Australia for Mackay traffic via Commercial Cable-New York.

Q. And the Azores on the same page please. A. Mackay traffic via Commercial Cable-New York.

Q. Belgium on page 3? A. Via Commercial Cable-New York.

[2373] Q. British Oceania on page 4. A. Via Commercial Cable-New York.

Q. Lebanon on page 9. A. Commercial Cable Company, New York.

Q. The Netherlands on page 10? A. Commercial Cable, New York.

Q. New Zealand on the same page please. A. Commercial Cable, New York.

Bertram B. Tower, for Intervenor—Cross.

Q. On page 13 St. Pierre, and Miquelon also on the same page Syria. A. Commercial Cable, New York.

Q. Do you understand that at least certain of those points are considered rather heavy traffic centers? A. It is my understanding that some of them are.

Q. So that diversion of traffic from Commercial to Mackay has not been a one-way street, has it? A. No, sir, it has not.

Q. I believe in June of 1947, at the request of the Commission a routing study was made to show the diversions of traffic between carriers.

Was that study prepared under your direction? A. It was.

Q. Will you indicate what that study showed as to diversions between Mackay and Commercial Cable Company during the month of June 1947? [2374] A. Yes, sir. To the Atlantic area, Mackay handled out of New York 1311 messages which were specifically routed via Commercial Cable.

In the same period, Commercial handled 2,155 messages which had been specifically routed via Mackay. I might add also that the two carriers—Commercial Cable and Mackay—handled a little over 1800 messages which had been specifically routed via All America to the Atlantic area—Europe and so forth.

Q. Mr. Tower, there has been some confusion in the record as to the position which AC&R, or the companies of the AC&R system, have taken in the rate case Docket 8230.

Would you indicate, for the record, precisely what the position of the American Cable and Radio system companies have been? A. Yes, sir. On page 2 of the memorandum brief, on behalf of All-America Cables, the Commercial Cable Company and Mackay Radio, this statement was made:—we are speaking here of the conclusion that was drawn—"that this Commission, in a proceeding of this sort should accept as a yardstick the net earnings of the international communications industry as a whole."

Bertram B. Tower, for Intervenor—Cross:

Q. As I recall the record, there was some confusion as to whether or not that was actually the yardstick recommended or whether it was the net revenue requirements of the AC&R [2375] system. Would you indicate the proposal made by the AC&R group, and the reason for that proposal? A. Yes. On page 7 of the same brief this statement was set forth:

"To meet their revenue requirements, most of the carriers, during the proceeding in this case, made specific proposals for rate increases. These proposals were spelled out in detail on the record and were aimed primarily at the individual situation of the proposing carrier with the exception that the three companies of the AC&R system were considered as a group. We believe that the AC&R proposal is sound.

"In view of the fact that the AC&R system, for whose revenue needs the proposal was advanced, includes both limited area cable carriers and a world-wide radio carrier, the proposal therefore will more nearly meet the revenue needs of the industry than will any of the other proposals."

Q. So the yardstick which we recommended to the Commission was the net revenue position of the industry?

A. That is true.

[2382] By Mr. Hartman:

Q. Mr. Tower, will you please turn to your Exhibit No. 168 and indicate from that exhibit the effect of the direct radio operation of Mackay on the AC&R system, on the basis of revenue per word? A. I believe the Mackay circuit with Portugal was opened October 20, 1947. In that month the AC&R system carried a combined wordage of some 44,000 words, with a revenue to the AC&R group of some \$1400, adding the \$332 with the \$1100 outbound and inbound. That is an average of a little over three cents per word.

Bertram B. Tower, for Intervenor—Cross.

In December, with the circuit in full operation for the entire month, the AC&R group handled some 76,000 words, with a revenue of \$5300, or an average [2383] revenue per word of around 7 cents per word.

In this period you will note that Mackay handled a substantially heavier inbound traffic volume from Portugal than in October.

Q. Those differences that you have pointed out in the case of Portugal and Surinam I assume result from the difference in divisions of tolls via radio and via cable inbound and outbound from those two points, is that correct? A. That is right.

[2388] Q. Will you indicate, Mr. Tower, what that exhibit reflects for the three months' period shown? A. This exhibit reflects the—it is a comparative statement of messages, words and revenue, of all of the international carriers handling traffic to and from The Netherlands, indicating percentagewise the relative volume handled by each, both outbound and inbound.

You will note that the inbound traffic messages handled by RCA communications has increased during that period from 49.9 per cent in October to 50.3 per cent in November and 55.6 per cent in December.

Q. What is the situation with respect to outbound? A. Outbound RCAC handled 33 per cent in October, 32 per cent in November, 30.7 per cent in December. Western Union went from 49 per cent to 52.8 per cent and the AC&R group went from 18 per cent to 16.5 per cent of the total traffic handled to The Netherlands.

Q. In each of these exhibits just referred to, Mr. Tower, [2389] the exhibits reveal, I believe, that the inbound proportion of the radio carrier is a much greater percentage than is the outbound percentage of the radio carrier, is that correct? A. Yes, sir, definitely.

Bertram B. Tower, for Intervenor—Cross.

Q. What is your explanation for that fact? A. I think it is all tied in with the interest of the Administrations on the other end, to send their traffic over the radiotelegraph circuits. I think I so previously testified.

[2398] Q. Mr. Tower, on cross examination of Mr. Stockton, Mr. Margraf pointed out that, for a period of, I believe, the first six months of 1947, the AC&R companies as a group had a substantially larger percentage of the gross international revenues than did RCAC, as a basis of comparison for the AC&R system and the RCA operation. Do you believe that the comparison of AC&R and RCAC, on a gross revenue basis, is the proper comparison to draw as between the systems? A. No, I don't believe it is.

Q. Will you explain why, please? A. In the first place you are comparing one radio telegraph carrier with three other carriers, two being cable carriers and one being radio. Cable carriers, you have operations at both ends of a cable circuit, with of course, much greater investment, essentially greater maintenance cost with respect to the maintenance of ocean cables.

As a matter of fact, I believe that the AC&R system, its three companies, has invested something over \$60 million primarily in its cable facilities, whereas RCA, I believe, has invested some, I think, a little over \$20 million. Naturally you would expect to have the greater gross revenue return on that much greater investment.

[2399] Q. In order that the record may be accurate on the point, would you use Exhibits 62 and 67 introduced by the Commission, to indicate the gross and net plant of RCAC and the AC&R system, please? A. On Exhibit 62 the book cost of RCA's operated plant is shown at December 31, 1947 as some \$21,000,000, and a net book cost of operated plant of \$7,800,000. On Exhibit 67, page 2, the book cost of the plant of the AC&R system is \$63,700,000, and a net of \$22,400,000.

Bertram B. Tower, for Intervenor—Cross.

Mr. Hawkins: What exhibit was that?

The Witness: Exhibit 67, page 2.

By Mr. Hartman:

Q. You pointed out, I believe, in your statement a moment ago, Mr. Tower, that the cable companies have a substantially larger investment, and also that they do cable traffic twice, they do operate normally both ends of the circuit. Is it not also true that they receive in most cases less small terminal payouts and things of that sort, that they receive practically 100 percent of the toll? A. In general, yes, that is true.

Q. If you do not consider revenue to be the proper basis for comparison what do you believe would be the proper basis for comparison? A. You might compare word volume.

[2400] Q. Will you compare Exhibit 160; will you compare 1946 and the first six months of 1947, with the totals for the AC&R group and RCAC? A. In 1946, the three companies comprising the AC&R system carried some 188 million words to and from the United States. RCAC carried 232 million words. In the first six months of 1947, the AC&R group carried some 108,181,000 words, the RCA Communications, 108,611,000 words.

[2410] By Mr. Hawkins:

[2413] Q. In connection with Exhibit 3 you referred to a number of points where Mackay traffic was routed via CCC New York. Do you have any knowledge of whether more Mackay Radio traffic is routed via Commercial Cable than Commercial Cable traffic is routed via Mackay? A. I believe I indicated in my testimony that June routing study there was more traffic specifically routed via Mackay going to the Atlantic area handled via Commercial than there was handled by Mackay routed via Commercial.

Bertram B. Tower, for Intervenor—Cross.

[2414] Q. Why does Mackay route the traffic via Commercial Cable? A. I don't know. I am not familiar with—I don't have anything to do with the routing policies of the company.

Q. Is it because, in certain instances, there might be more revenue to the AC&R system? A. That may be but I am not familiar with the routing policies.

Q. Your testimony indicates, does it not, that the AC&R system routes traffic by cable or radio as it sees fit under the particular circumstances. A. I don't believe the testimony said that at all. I merely enumerated the results of a study made in June with respect to traffic handled by the three companies.

Q. Mr. Tower, you referred to certain matters in connection with the rate proceeding Docket No. 8230. I believe you made the statement that if the Commission set its rates based upon the needs of the most efficient carrier, all other carriers would go out of business. A. I don't believe I used those words.

Q. Do you recall your testimony on that point? A. I believe I said that if the Commission based a rate determination upon the results of the most profitable [2415] carrier, it may well eventually force the other carriers out of business and result in a monopoly.

Q. Isn't it true that that rate policy would more probably result in a situation where some of the carriers might make less operating income but not necessarily go out of business? A. I believe Mr. Werner pursued that, and I thought I had cleared that up to some extent. It would depend a great deal upon the investment of the particular carriers and in particular the carrier upon which such rates were determined. Presumably such rates would be determined upon the rate base of that particular carrier.

Q. If the Commission should set its rates based upon the needs of the most efficient carrier, and traffic and revenue is diverted from that carrier to a carrier which is in a less favorable financial operating position, is it not true that the

Bertram R. Tower, for Intervenor—Cross.

effect of that would be to raise the general level of the rates to the public? A. That would be possible, I presume.

Q. The AC&R rate proposal would take into account the net earnings of the industry as a whole, as I understand it. Is that true? A. Yes. We thought the commission should consider the industry as a whole.

Q. Under those circumstances the earning position [2416] of Commercial Cable is a factor in determining the requirements of the industry as a whole. A. Commercial Cable is part of the industry.

Q. So that if you take into account the needs of all carriers, that method of adjusting rates would consider the earnings of all companies, regardless of whether or not they were in a more favorable or less favorable financial operating position. A. It would take into consideration all companies.

Q. Adopting the same rate proposal now—and by this I mean the AC&R rate proposal—is it not true that, by increasing the operating costs, that the industry as a whole through the addition of new plant and new facilities, new operating expenses, will necessarily require higher rates?

A. If you assume that the addition of new circuits—and this is your assumption, would materially add additional expenses, it might possibly require higher rates, so long as competition is considered to be a policy of the Commission and of the Government.

Q. Is it not true that with the addition of many new circuits there would be need for additional plant, additional investment in communication facilities? A. There undoubtedly would be required, for many new circuits, some additional plant. How much I don't [2417] know.

Q. And the investors would expect a return on that investment? A. Naturally.

Q. And the public would be called upon to pay that return on the investment? A. It all depends on how much these new circuits would affect the expenses.

Bertram B. Tower, for Intervenor—Cross.

Q. We are talking about the return on investment in communications plant. A. Sure, but presumably in your new circuits you will produce additional business.

Q. Do you have any basis to conclude that new circuits would produce any additional business? A. No specific knowledge.

Q. So we can set that factor aside. A. Well, it is possible.

Q. If additional communications plant must be added, as I think we have agreed upon, there must necessarily, at some time, be additional expense to operate the additional plant. A. Not necessarily.

Q. Well, at the time you—as you gradually expand and increase the plant there will be some expense—some additional expense—in the operation of that plant. [2418] A. Operating expenses?

Q. Yes. A. Not necessarily.

Q. Suppose you should add 10 circuits? A. Ten circuits?

Q. Yes. There would be an increase in operating expenses, wouldn't there? A. Maybe some. Not necessarily any increase in your labor factor which is probably 75 or 80 percent of your operating costs.

Q. Isn't it true that the expansion of facilities here, the expansion of communications facilities, with the expenses necessary to operate those facilities to capture the same amount of revenue, would have the effect of raising the over-all cost to the public for communications service? A. There might be a small portion, but I say not necessarily any substantial increase in expenses.

Q. Why do you say not necessarily? A. Because there may not be any additional personnel required.

Q. You have indicated that if you add additional circuits there would be some additional expense. A. I said there may possibly be some additional expense. There may not be any additional personnel required.

[2419] Q. But at the very least the investor would expect a return on the additional investment that must be paid for by the public. A. There might be added revenues.

Bertram B. Tower, for Intervenor—Cross.

Q. You said a few minutes ago that there wouldn't be any added revenues. We are talking about the expense side only. A. I didn't say there wouldn't be any added revenues. I said it was possible that there wouldn't.

Q. We can confine ourselves to the one side here—the expense side.

My question is: is it not true that, with the continued expansion, the increase in the communications facilities, you would have a higher cost to the public to operate the existing facilities plus the expanded facilities? A. I said maybe so, but it isn't necessarily so, so far as added personnel are concerned, which is the major item of expense.

Q. But you have to have operators to operate all the circuits or operate all the facilities of the industry as a whole, whatever they may be, isn't that true? A. That is true, but the addition of new circuits doesn't necessarily require the addition of new personnel.

Q. Can't we come down to a simple proposition. [2420] Each time I have asked the question you said "Well, it may not necessarily." A. Well, that is my opinion, Mr. Hawkins.

Q. My question is: will it not, with certainty, increase the over-all operating cost to the public? A. I say the addition of new circuits does not necessarily increase your operating expenses.

Q. But how about the continued expansion of all facilities on a world-wide basis? Wouldn't that necessarily increase the cost? A. Do you mean a long range program of adding new circuits?

Q. Yes. A. I think I indicated in my testimony that there probably would be some added cost.

Q. Which the public would have to pay? A. Not necessarily. It all depends upon what revenue would be produced by the addition of such facilities.

Q. But you indicated that there would be no additional traffic volume. A. I don't think I said that. I think I said it was possible that there would be additional volume.

Bertram B. Tower, for Intervenor—Cross.

Q. Do you have any basis for the statement that there would be additional traffic volume? A. I really can't say. It is looking into the [2421] future as to which I could give my opinion but I can't make an accurate statement as to what will result.

[2452] Q. On page 2158 and 2159 you were discussing the traffic statistics with respect to Holland. You made reference to the inbound percentage by the radio carrier and you went on to say in lines 6 to 9:

"I think it is all tied in with the interest of the [2453] Administrations on the other end to send their traffic over the radio telegraph circuits."

Does the Holland Administration determine whether traffic goes by cable or radio outbound from Holland? A. I really don't know. I think, just from a general understanding, I believe that the cable companies only receive routed traffic. All other traffic is turned over to the Holland PTT.

Q. Isn't it true that the telegraph users—the telegraph using public—in Holland sends traffic to the United States via cable or radio, as they see fit, regardless of what the desire of the Holland Administration may be? A. I believe in order to send cable it must be specifically routed via cable, and I believe the solicitation is somewhat restricted in Holland by the cable companies.

Q. To simplify the point: the Holland Administration does not have the control of all outbound traffic from Holland? A. When it is specifically routed via cable it goes over the cable.

Q. The public in Holland determines how traffic will be sent, isn't that true? A. If a person wishes to route via Commercial Cable I believe he has that election.

Q. Or if he just goes to Commercial Cable or Western [2454] Union? A. Pardon.

Bertram B. Tower, for Intervenor—Cross.

Q. Suppose he goes to a Commercial Cable or Western Union office and files a message, fills out a blank; that traffic would con- to the United States by Commercial Cable or Western Union, would it not? A. If he files it in the Commercial Cable office in Rotterdam. That is the only place we have an office.

Q. So the manner in which traffic is sent to the United States from Holland depends upon the particular desires of the telegraph using public in that country? A. The customer has the election to route the traffic, I presume.

Q. And the customer has that election without regard to what the desires of the Holland Administration may be? A. I presume that that is true.

Q. There is nothing to prevent the Commercial Cable Company from opening an office in, say, Amsterdam? A. I don't know. There may be. I don't know. The fact is that RCA, the only radiotelegraph carrier carries almost 60 per cent of the traffic outbound from Holland, which would indicate to me a definite preference by the PTT which has control over the entire land for handling the traffic over its radiotelegraph circuits.

Q. The PTT has no other way of sending traffic to the [2455] United States? A. That is right—no competition. It is a government monopoly.

Q. If all the telegraph using public in Holland should suddenly decide that all of the messages would be filed, say, with the Commercial Cable office or offices, then there would be no traffic handled inbound to the United States by RCA?

A. That is a far fetched assumption, I think, but it is possible.

Q. But it illustrates the point, doesn't it? A. With that assumption, if they all routed via Commercial Cable I assume it would go to Commercial Cable.

Q. So it comes down to a matter of competition in Holland? A. I don't think so. There is a very limited competition in Holland.

Bertram B. Tower, for Intervenor—Cross.

[2462] Q. On recross examination, Mr. Tower, Mr. Hawkins asked a series of questions as to the setting up of new plant under present conditions with the traffic volume leveling off or possibly even declining.

Are you familiar with the annual reports of the carriers—that is, the Form "R" reports for the radio telegraph carriers and the Form "R" reports for the cable carriers that are filed with this Commission? A. Yes, most of the carriers.

Q. Have you ever had occasion to examine those reports [2463] as to the plant situation changing from year to year? A. In a general way, yes.

Q. Is it a correct statement to say that the carriers in the International Telegraph field, both cable and radio, are continually adding to their plant? A. I would say that in past years, that is true.

Mr. Werner: Adding or modernizing?

By Mr. Hartman:

Q. Are they showing increased plant? A. In general I think that is true.

Q. If the question Mr. Hawkins asked you as to the effect of Mackay's plant additions on the rate structure is followed through, is it not likewise true that any addition to plant of any carrier, or of all carriers, which increases their plant investment, must also affect the rate structure? A. Along the lines of his assumptions and questioning I would say that is true.

[2468] Commissioner Jones: Is there any objection to the offer in evidence?

Mr. Margraf: I will restate the objection which I have heretofore indicated to Exhibits numbers 70 to 82 inclusive, and I would like to add to that objection to Exhibits 201 and 202, in so far as they relate to matters concerning the British Empire. The basis

Bertram B. Tower, for Intervenor—Cross.

for my objection to these Exhibits is that they are irrelevant and immaterial to this proceeding. In support of that I cite the position of the Commission in Docket Numbers 7094 and 7412, consolidated case which was [2469] entitled "In the Matter of Radiotelegraph Circuits between the United States and British Commonwealth and Certain Other Foreign Points" and certain additional titles.

Commissioner Jones: What were the docket numbers?

Mr. Margraf: 7094 and 7412. On page 38 of a copy of the Commission's decision which I have, reference is made to the argument that was advanced by Mackay to the effect that certain provisions in RCA contracts with its foreign correspondents, worked to the disadvantage of Mackay in the establishment of circuits to foreign points. After discussing that argument of Mackay, the Commission said:

"Without in any way condoning any exclusive provisions which RCA had in its contracts, the problem presented here is one of determining what grants of the circuits involved herein would best serve the public interest, convenience and necessity, and in making such a determination we must consider the facts before us as to present-day operations and those reasonably to be expected in the future, and not as they might have been, had certain factors been different."

I can conceive in no way in which the Commission could have said more plainly that the testimony and argument of Mackay with respect to the effect of provisions in the RCA contract is entirely irrelevant to a proceeding in which there is involved the question of who gets what circuit to what points at the present time.

Bertram B. Tower, for Intervenor—Cross.

[2470] The Exhibits to which I have made my objection relate to the matter of certain provisions in the RCA contracts, and it is my belief that all of those Exhibits are entirely irrelevant and immaterial to this proceeding.

[2478] Commissioner Jones: With reference to the specific objections on Exhibits 70 to 82 inclusive and 201 and 202, it seems to me the following is the category of history of the proceedings of the carriers to get circuits and to operate circuits to fixed points in the international field.

Early in the hearing the Commission introduced exhibits which touched upon complete data on the history of the [2479] carriers receiving applications, the renewals being granted or renewals being denied, or their applications being set for hearing—specifically Exhibits 6 and 7, which have been used throughout the hearing. Also the entire contracts of all the carriers have been placed and incorporated in the record by reference, and it seems to me, within the purview of the scope of the way the proceedings in this case have been handled, that the Exhibits 70 to 82 and 201 and 202 respectively are proper and relevant in the case, and I therefore admit these exhibits in evidence.

The weight that will be attached to them and the significance to be given to them is a matter for final decision in the case. That is what the proceeding is about.

Mr. Margraf: Mr. Commissioner, may I make some comments about specific exhibits in this group?

Commissioner Jones: Yes.

Mr. Margraf: I would like to move that Exhibit 75, which is the amendment to the amended and supplemental petition, if it is admitted in the record, that its admission be limited in such a way that it

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would not be proof of any of the allegations contained in the petition, but be admitted only for the purpose of showing that there was an amendment to the amended and supplemental petition filed.

Similarly, I move that Exhibits 201 and 202, if they are admitted in the record, not be admitted for the purpose of [2480] showing the truth of any of the statements made in the memoranda to the Department of Justice in Exhibit 201.

Commissioner Jones: I am inclined to think that the request on the part of RCA is a proper one with reference to these particular exhibits.

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[2481] Commissioner Jones: I rule on Exhibit 75 and on Exhibits 201 and 202 in accordance with the request of RCA counsel, that they will merely show that such a communication was made and such a petition with reference to Exhibit 75 was filed, but the allegations will not be considered as part of the evidence.

Mr. Kennedy: Very well, sir.

Mr. Margraf: Just to finalize this, Mr. Commissioner, do I understand that your ruling is that those three exhibits are not admitted for the truth of any statements or allegations contained in the exhibits?

Commissioner Jones: That is what I intended to rule, if I didn't so rule. All the remaining exhibits of Mackay Radio and Telegraph Company are admitted.

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T. H. Mitchell, for Appellant—Cross.

[2482] T. H. MITCHELL was called as a witness on behalf of RCA, having first been duly sworn, was examined and testified as follows:

[2485] *Cross examination:*

[2504] Q. Before leaving this 1947 annual report—you have a copy there—will you please read the second paragraph on page 17 entitled, "Communications, RCA Communications, Inc." A. "RCA Communications experienced a decline in net operating revenue during 1947 caused principally by increased operating costs and by a decline in the volume of inbound words from certain foreign countries."

*Q. Now, Mr. Mitchell, I would like to call your attention to your testimony in Docket 7094 and 7412 in early 1946.

Do you have that? A. I don't have that.

Q. I will read it to you at page 62 and then submit [2505] it to you for any correction or comment you may wish to make.

"By Mr. McDaniels:

"Q. Will this pandora program enable RCA Communications, Inc. to offer an improved service at lower rates? A. It will, and that is the prime objective of the plan. We know that in order to meet the tremendous competition which we face in the future, not only within the international telegraph industry, but the competition from greatly increased international airmail and telephone service, we must handle greatly increased volumes of traffic more expeditiously and at lower cost.

"The testimony of Mr. Sparks will show you how the improved methods of operation we are now installing will enable us to handle much more traffic at less expense."

A. I remember it.

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Mr. Margraf: What page is that on?

Mr. Kennedy: Page 62 near the bottom of the page.

By Mr. Kennedy:

Q: How do you reconcile that testimony in early 1946 with this report of 1947? A. I don't think they are inconsistent. I think we all know that the traffic volume inbound from the world has diminished, not because of any installations of equipment or any action we have taken here in the United States, but [2506] principally because of dollar credits in foreign countries.

Q. In this testimony you were expecting a greatly increased volume of traffic, according to your language here:

"We must handle greatly increased volumes of traffic more expeditiously at lower costs."

Are you handling increased volumes now? A. No, sir, but we could if the volume was there.

Q. Are you handling the volume that you are handling at lower cost? A. Lower cost on what?

Q. Than as compared with that time in 1946? A. In view of the greatly increased labor costs, I doubt that we are. However, we are handling them at lower cost than we would have been handling them had we not improved our operating facilities.

Q. Then as I get it from your answer, contrary to your anticipation in 1946, from this testimony, you are not handling an increased volume, and the volume that you are handling is not at lower cost? A. I suspect that is true, for the reasons which I have given, Mr. Kennedy. I am afraid you misinterpret that testimony. That testimony was not intended to forecast that there for sure would be tremendously increased volume. It was our hope that there would be.

[2507] Q. And you were manning your plant and fixing your plant, enlarging your plant, to anticipated increased

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volume, is that what you intended to say? A. Among other things, that is true.

Q. There is a third element that you brought into this in addition to greater volume at lower cost, you also brought in at lower rates. Has that been accomplished since 1946?

A. No. That hasn't been accomplished since 1946.

[2510] Q. Mr. Mitchell, at page 418 of your testimony in this case—your direct testimony—after reciting some history, you said, at the top of the page:

“The answer was to establish an American owned company to engage in international radiotelegraph operations and in competition with the cable companies.”

Do you find that? A. Yes, sir.

Q. Do you have any information that at that time, which I think was 1919—do you have any information that at that time there was an inadequate cable capacity to handle all the telegraph traffic across the Atlantic? A. I do not, and, I don't think that that is true. I don't think that it was a matter of cable capacity.

Q. But you do not contend there was not sufficient capacity? A. No, sir.

[2517] Q. Further, Mr. Mitchell, you proceeded to list, in some detail, the first circuits which RCA inaugurated between the United States and foreign countries.

At the bottom of page 418 you said:

“The first direct circuits were between the United States on the one hand and Great Britain, Hawaii, and Japan.”

Now, with respect to Great Britain, I believe you have said you don't contend that at that time there was not adequate cable capacity? A. No.

Q. You do not contend that? A. I don't contend that. I don't, of my own knowledge, [2518] know, but my belief is that there was adequate capacity from a word handling standpoint.

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Q. And you know from your own knowledge, or from information, that at that time there were direct cable circuits between the United States and Hawaii? A. That is my understanding.

Q. Referring again to Great Britain as well as the others that will be mentioned later, I assume your circuit was opened pursuant to a contract which is on file here with the Commission? A. I presume it was.

Q. I believe there has been testimony in the record that, at the inception of that circuit opening, the contract provided for a fifty-fifty division of tolls, is that your recollection? A. That is my recollection, yes, sir.

Q. If that is the case then, on all traffic that RCAC secured over that circuit, it deprived the American telegraph industry of 50 per cent of the tolls of the traffic that it so handled, is that correct? A. Do you mean to the extent that words were handled by radio which might have been handled by cable?

Q. That is correct. A. It would have meant a division of 50 per cent of the tolls to the British and 50 per cent to the Americans.

[2519] Q. In other words, is it correct to say that at the time that the RCA opened this circuit with Great Britain, the cable companies were handling all of the traffic, since there was no radio involved, and were retaining all of the tolls for that traffic? A. I presume that is true, less whatever they had to pay the British.

Q. So when the radio service of your company entered the field, it thereby deprived the American telegraph industry of approximately 50 per cent of the tolls of the traffic that it so handled? A. And coincidentally, offered the American public a type of service which it theretofore had not had the privilege to enjoy.

Q. Well, that is very graciously received, Mr. Mitchell, but I wasn't touching that point at the moment.

Now, the testimony that you have just given with respect to depriving the American Telegraph industry of this 50

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per cent of the tolls on the traffic that it handled to Great Britain, likewise applied to all the other circuits that you operated, whether it is one-third, or two-thirds or 15 per cent? A. The principle was there, yes.

[2534] By Mr. Kennedy:

[2536] Q. Do you recall testimony of Mr. Scholz, I believe, that when Mackay was awarded a temporary authorization for Portugal, it advised the Portuguese company that it was ready to operate printer, and that the Portuguese said they didn't have the equipment? A. I believe I heard such testimony.

Q. Can you visualize why they didn't have the equipment to operate with Mackay and did have equipment to operate with RCAC? A. Yes, sir.

Q. What is that? A. I suspect it was because at that time they had only the minimum amount of equipment which I have referred to in here, which we had provided them, and they didn't have two full sets of it.

Q. They didn't have two full sets? A. That is right.

Q. One set would be sufficient on a westbound basis, wouldn't it, to fork with RØA and Mackay? A. Technically it could be done, yes, sir.

Q. So then you don't know why they stated they couldn't do that? A. No, I don't.

[2537] Q. Why was the use of printer equipment discontinued when Mackay opened the circuit? A. The answer that I got from Senor Cunha and Senor Vas Pinto, when I was there the latter part of 1947, was that Mackay was not equipped to operate with them on a printer basis and it was therefore necessary for them to revert to the Morse basis in order to work by a method that [2538] each of the American correspondents was equipped to work by.

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Mr. Margraf: Mr. Kennedy, may I ask the witness to identify the two men to whom he refers?

Mr. Kennedy: Yes.

The Witness: Mr. Vaz Pinto, or Senor Vaz Pinto, is the Director General of Compagna of the—I shall call it—Portuguese company, and Senor Cunha is the chief engineer of that company.

By Mr. Kennedy:

Q. You say that they told you when you were in Portugal that they discontinued the use of the printer equipment because Mackay was not prepared to do so? A. Yes, sir.

Q. Was that in a letter or conversation? A. Conversation.

Q. When you inaugurated printer in July 1947, did you operate it in both directions? A. I don't recall. It is possible we may have started it in one direction and shortly thereafter gone to both directions.

On the other hand, I suspect that it was in both directions from the beginning, because it is not as easy to coordinate operations when one direction is by one method and another direction is by another.

Q. Was it 5-unit or 7-unit? [2539] A. 5-unit.

Q. What was the date of discontinuance of the printer circuit? A. It was approximately the time that the S.T.A. was granted to Mackay. I am not sure. I don't believe I testified directly, and I am not sure now. I was in Europe at the time and received word of it while I was over there.

Q. Do you have the exact date? A. I can get it for you. I don't believe that I have it.

Q. Would you mind getting it, if it is not too much trouble? A. I will be glad to.

Q. While you were operating printer to Portugal, subsequent to July 1947, did you also have a Morse circuit in operation with Portugal? A. I don't think so. We had a Morse circuit capable of operation.

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Q. Set-up for operation? A. Surely.

Q. Why? A. Because we already owned the Morse equipment. We have much Morse equipment which is workable on any circuit. The equipment which we have installed in New York would work the Portuguese circuit or the Swiss or any other circuit which [2540] we chose to key with it.

Q. Why is it that since Mackay discontinued service to Portugal—February 12, I believe—why is it that you haven't reverted to printer again? A. We are ready if it is ever seen fit to revert to it.

Q. Do you know why? A. I think there are several reasons. They are in the process of moving their operating room from the fourth floor of their building to the top floor, which is several stories high—I don't just remember which floor—but that delayed it for a time. Also, I was told that until the balance of their equipment on order arrived, and until Mackay was able to operate with them by printer, chances were that we would have to continue to operate by Morse.

Q. Then so far as you know, that same reasoning could have applied for the discontinuance of the printer, couldn't it? A. It is my understanding that the discontinuance occurred before the incidents that I have just mentioned.

Q. Have you any indication as to when the Portuguese company will be ready to go back to printer? A. I shouldn't be surprised any day now, because the frequency shift equipment has been delivered there, and as I understand it, is in the process of installation now.

[2542] Q. While you were operating printer to and from Portugal, from July 1947 until the Mackay circuit was opened, or that approximate date, did you have to switch at any time from printer to Morse? A. I dare say we did. I don't know for a fact that we did, but almost invariably, for the first several months that a foreign correspondent operates a printer, you have to [2543] revert

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to the Morse until he gets accustomed to it. You have to wean him away from the practice that he has followed for the past 35 or 40 years.

[2572] Q. Page 427, at the top of the page. You said in answer to a question as to Portugal-forking their circuits with Mackay in New York, you said, "Because they propose to use the [2573] same transmission and reception facilities to operate with us both." You can not use the same reception facilities on both, can you? A. No, that was erroneous.

Q. You mean transmitting only? A. They would have had to have additional receivers to receive it.

Q. Now, in the same paragraph of the same answer you say, "This would, of course, degrade the service, but the only alternative would be complete duplication of the facilities, and this would be too expensive for them." Now if the operation from Portugal to both RCA and Mackay is what you are alluding to, how would that degrade the service?

A. It inevitably does when you fork the circuit. When you divide the facilities at one end of the circuit between two operators at the distant end it can not but hurt the service.

Q. You were here the first day of the hearing, when I, through cross examination of Mr. Woodward, I believe brought out that RCA had been forking circuits voluntarily for many years. A. Yes.

Q. If that is degrading the service, why did your company volunteer to do that, and why has it done so over the years? A. It has done it for the reason that over the same [2574] circuits, notably the ones which you have mentioned, they have traffic volumes to permit that type of operation without serious degradation of the service.

Q. Then it is question of volume? A. That is one of the principal considerations.

Q. It is lack of volume that degrades the service? A. That is one of the principal considerations.

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Q. Do you fork any circuits with other countries where the volume is as heavy as the volume from the Portuguese?

A. I do not believe that we do.

Q. You do not have that volume with Columbia? A. I do not believe so.

Q. What is the difference? A. The Portuguese circuit is about 50 per cent greater than the volume of Columbia.

Q. You are speaking of your own volume over each? A. Yes.

Q. But if you add Tropical's volume to your volume on the Columbia circuit what would the result be? A. I have no idea.

Q. In other words, you are considering all of the radio volume from Portugal, whereas from Columbia you are considering only your own volume without regard to Tropical's volume? A. That undoubtedly is the case, but I do not know what Tropical's volume is.

[2575] Q. Then you are referring to figures that are not comparable? A. I should say if it were within our power to do so, we would operate a continuous single circuit, a solo circuit to Columbia.

Q. When these arrangements were made with Tropical, Mr. Mitchell, isn't that true that your company owned and controlled the station in Columbia which was operating with you and Tropical? A. It is my recollection that we did not own that station. We had an interest in it at that time, I believe.

Q. Is it not true that you owned approximately a 50 per cent interest and actually managed and controlled the station? A. That is my recollection. That was before my time, however.

Q. Now, I am just not clear, other than what you said, as to why the service itself would be degraded by having a forked circuit from Portugal to Mackay and RCA in New York. A. It is such a self-evident thing that it would be hard for me to explain it. You have on the one hand the Portuguese relying on people in Lisbon. These same

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people with same facilities, save the receiver which you pointed out, operate first with RCA in New York, or first with Mackay in New York, and then RCA, and they alternate back and forth be- [2576] tween the two. Suppose your company has an important message destined to Lisbon at a time when my company has control to operate the circuit and we are running a string of 50 night letters all in one successive transmission, your important message, or Mackay's important message must of necessity wait until that long string of communications which the RCA is transmitting can be cleared before you can clear your message. On the other hand, if that important message came to RCA during the RCA transmission, the night letters would be set aside and the important message run through in a hurry. That is just one of numerous aspects of the thing. Added to that—

Q. Just a minute, Mr. Mitchell, right there. You are speaking of a fork in the other direction where Mackay and RCA would be forking to Lisbon. A. That is what I thought you had in mind.

Q. I am speaking from Lisbon to the United States, where all of the traffic is controlled by one company and they could route it over to either your fork or Mackay's fork. A. You are not suggesting, Mr. Kennedy, I hope, that the traffic will be uni-directional in its flow. Certainly there would be traffic flowing from Lisbon to the United States, but conversely, there would be traffic flowing from the United States to Portugal.

Q. It would not be on a forked circuit there. How would Mackay's traffic hold up then, or vice versa, when you [2577] are operating your transmitter and Mackay is operating its transmitter? A. But there is only one transmitter at the other end and one group of operating personnel.

Q. I am not speaking of one transmitter, I am speaking of two receivers. A. But one operator?

Q. One operator. A. Yes, sir.

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Q. That is the way it degrades the service? A. I think it would present quite a lot of degradation of service.

By Mr. Werner:

Q. Could not you and Mackay transmit simultaneously?

A. If Portugal set up two receiving positions, which they did not do.

Q. Which they did not do? A. Yes. They have one receiving operator and one transmitting operator and he alternately works the two opposite terminals that he is working with.

Q. Do not the messages come out on a tape? It just comes out in Portugal on a tape and the operator just tears off the tape and reprocesses it. A. No, there are usually, in the case of a forked circuit operation receiving position, two bridges across the top [2578] of the typewriter. He turns on the tape of the company, or the agency he is copying, and that tape flows by and he copies that, and the other receiving tape goes on the floor, and then when he gets through with the tape he is typing he turns on the other tape.

Q. The transmission could be simultaneous, could they not? A. Yes.

Q. You just do not know which companies' tape is being reprocessed in Portugal? A. That is the point. Transmissions from the United States are simultaneous, or could be simultaneous.

By Mr. Kennedy:

Q. Mr. Mitchell, on the same page you state that the available services over the Portuguese circuit are the telegraph, program transmission service, and uni-lateral press. Further on you state, "Furthermore, it is contemplated that radiophoto service will be inaugurated." Referring to S. Res. 187 Exhibit 8, pages 25 and 26, it shows the volume of photo and program service that the company has

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handled over the last years. Exhibit 133 in Docket 8230, Tables 6 and 7, show program service and photo service that you handled to and from Portugal in 1946 and the first half of 1947. It appears from this exhibit that you handled no photos at all to or from Portugal. A. I believe that is correct.

[2579] I do not think I claimed that we did.

Q. You said you had available program service during this same period, that you handled 10 minutes of programs over this period of a year and a half. Do you have any record of that? A. No, but I have no reason to doubt it.

[2580] Q. Do you contemplate multi-plexing to Portugal? A. Not in the near future. When, as, and if the traffic volume develops to the point where it appears that that might be desirable, we would be ready to do so.

Q. You say on page 427 of the record that you contemplate inaugurating volume press service. Do you have that volume press service where you do not have multiplexing? A. Yes, sir,—I beg your pardon, I do not believe we do have at the moment.

Q. You do not? A. I am not sure about that. Let me think just a minute. I believe we do have a tariff to provide that service to Cuba, and we do not have multiplex service to Cuba. By and [2581] large it is to points where we have multiplex service, and the reason for that is the added capacity that permits that.

Q. The added capacity permits the lower rate whereby you can supply such service, is that right? A. Yes, that is correct.

Q. If you furnish it to Cuba, or any other place, where you have just one circuit, isn't it possible to tie up that one circuit and you will delay other traffic? A. That is possible, yes, sir. That is why it is not done frequently.

[2582] Q. Now, with respect to The Netherlands, Mr. Mitchell, at the time you inaugurated your service to The

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Netherlands in 1926 you had no doubt but what there was sufficient physical cable capacity to handle the traffic? A. I have no reason to doubt it, no, sir.

Q. Now you stated at page 430 that you established multiplex equipment on January 11, 1938. How many channels did you set up under that system? A. It was either 3 or 4. I am not sure.

Q. In both directions? A. In both directions, yes, sir, or in each direction.

Q. You established multiplex equipment for 3 or 4 in each direction? A. Yes.

[2583] Q. At that time, in 1938, could you have established a dual channel or a duplex arrangement instead of a multiplex? A. I am not sure just in what sense you are using the word "duplex". You mean the two-channel method?

Q. In each direction. A. Two channels in each direction?

Q. Yes. A. We could have, I am sure.

Q. That would have created sufficient capacity at that time, would it not, even if the number one channel is not sufficient? A. That is true. I suspect, however, that the same [2588] differences existed then in the case of that equipment as exist in the case of this present equipment. The present equipment which, as I have stated, is designed to operate four channels simultaneously was first designed to operate only two channels simultaneously; and it was found that after the creation of the equipment and facility essential for the operation of two channels, the additional two channels could be acquired at a ridiculously small additional cost, and so we standardized on the four instead of the two. It was a matter of only a few hundred dollars.

Q. At which time? A. In the case of this model which we now use, the design and building of those occurred, I believe, during the war years.

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Q. In 1938 you could have established a two-channel system cheaper than you could have the three or four, whichever was established? A. I can not testify as to that. It may have been possible, for the matter of two or three hundred dollars saving to have established a two-channel system instead of a three-channel, but I think business judgment in that case would certainly indicate that you should spend the extra couple of hundred dollars and get additional channels.

Q. Now, as a matter of fact, Mr. Mitchell, when you speak of the capacity of the radio circuits in your system, [2589] it does not mean anything, does it, so far as the added operations are concerned? A. Well, we hope it means something to us, Mr. Kennedy.

[2591] Q. The everyday working capacity is just what you would set up to use from what experience has shown you for that particular period, is that right? A. Yes.

Q. But if you had notice that tomorrow is going to double that traffic load, you could set up the facility immediately? A. Yes, sir.

Q. So what do these exhibits mean, Exhibit 173 which you have sent in here purporting to show the capacity? A. They mean that in the course of our normal operations those were the capacities which we maintained daily.

Q. And they have no relationship to whatever additional capacity you could set up there at any time? A. Oh, we could set up very much more capacity there.

Q. So it is true, is it not, that due to the flexibility you have spoken about your system has sufficient potential [2592] capacity to any country in the world with which you operate to handle the entire traffic load now handled by cable and any other radio carrier? A. I suspect that is true.

Q. So again, if you resort to the matter of capacity as a determining factor, there would never be any need for

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any other circuit, would there, cable or radio? A. On the basis of capacity alone, I should say you are right.

[2598] Q. Mr. Mitchell, in regard to the traffic situation over the circuit of your companies; circuit with The Netherlands, it appears from Part 2 of the hearings on Senate Resolution No. 187 that in the year 1937 your company handled inbound 2,116,052 words. That is on [2599] page 369. On page 375 it is indicated that the company handled inbound from The Netherlands for the year 1938 2,096,594 words. In the opposite direction, outbound, in 1937, you handled 1,339,859 words, and in 1938 outbound 1,167,939 words. Now, do you believe that that was a sufficient volume of traffic to call for or reasonably require the multiplexing of your circuit?

Mr. Margraf: Does that include transit traffic, Mr. Kennedy?

Mr. Kennedy: Yes, I believe it does.

The Witness: I cannot testify as to that. However, it must have been the belief of the then vice president and general manager, Mr. W. A. Winterbottom, a man of lifetime experience in the industry, and the belief of the corresponding people in the Dutch Administration, that such was the case, otherwise I don't believe that they would have gone to the expense, on each end of the circuit, of making the installation.

[2603] Q. Now, Mr. Mitchell, in your Exhibit 174—do you have it there? [2604] A. I will get it. What exhibit is that?

Mr. Margraf: That is the hourly movement of traffic.

The Witness: Yes, sir.

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By Mr. Kennedy:

Q. On this date shown on pages 1 and 2 of Exhibit 174 you were operating a multiplex channel and also a Morse channel; is that correct? A. That is correct.

Q. Did that employ necessarily separate frequencies? A. Yes.

Q. Why did you not use those multiplex channels in the same day and during the same hour? A. I think I emphasized that in my direct testimony. The Netherlands are not technically equipped, either from the standpoint of material or personnel, to operate all four channels multiplex. They do feel the need of additional capacity over one channel of multiplex, and they prefer that we operate with them a Morse circuit, to make up the difference, which they are equipped to operate.

.
[2620] Q. How many other forked circuits do you operate from New York or San Francisco? A. We operate several. The following circuits are operated on a forked basis from New York—

Mr. Werner: Is this simultaneous forking or time forking?

The Witness: I will give it as I read it off.

Mr. Werner: All right.

The Witness: Port au Prince, Haiti, and Ciudad Trujillo, they worked on a printer basis employing the gill selector between the two. Guatemala and Panama forked on a Morse basis. Quito, Ecuador, and Santiago, Chile, are forked on a Morse basis. Oslo, Norway, and Helsinki, Finland, are forked on a Morse basis.

By Mr. Kennedy:

Q. Is the circuit to Norway heavy? [2621] A. To Norway it is fairly heavy, and Helsinki is very light. And

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Madrid, Spain, and Barcelona, Spain, are both worked most of the time by Morse, although Madrid not infrequently communicates westbound by printer.

Mr. Werner: When you say forked on a Morse basis, does that mean simultaneous forking?

The Witness: Yes, simultaneous, regarding both of them, on call. Frankfort, Germany, and Vienna, Austria, on a simultaneous printer basis. Warsaw, Poland, and Beirut, Syria, are operated on a Morse basis. Prague, Czechoslovakia, Belgrade, Yugoslavia, and Athens, Greece, are operated on a forked basis with Morse. Cairo, Egypt, and Istanbul, Turkey, are forked on a Morse basis. Paramaribo, Surinam, and Wilhelmstad, Curaçao, are operated on a printer forked basis, employing a gill selector.

You asked also about San Francisco, I believe.

By Mr. Kennedy:

Q. Yes, please. A. From San Francisco the following circuits are operated on a forked basis; Sydney, Australia, and Melbourne, Australia. That is forked at the request of the Australians, and for their convenience.

Q. Is that printer or Morse? A. The normal operation with Sydney is on a printer basis, employing multiplex. At certain hours of the day we [2622] revert to Morse to operate with Melbourne. There is under development at the moment an extension of a multiplex channel from Sydney up to Melbourne, and when that is completed that will end the forking of course. It is done solely at the request of and for the convenience of the Australians.

Q. Is the MUX system being made available? A. No, it is not. The condition which I have not yet described, but it will be in the condition which I say is in the process of development on that end. The only other circuit operated on a forked basis out of San Francisco is the one with

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Tokyo and with Nanking, China, and that is on a Morse basis.

[2623] Q. Will you please give us—I think it is in here some place, but right at this point will you give us the circuits which you have now operating under the multiplex system?

A. Yes, sir. Shall I read that?

Q. No. You have there listed between San Francisco and New York, between the United States and a number of countries, Switzerland, Italy, Tangier, Argentina, England, The Netherlands, Hawaii, Philippine Islands, Australia, China, and France.

[2624] Now, does that mean that between the United States and each of those points you have four channels which might operate simultaneously in each direction?

A. Yes.

Q. To each of those points? A. Yes, with the possible exception of the one in Sydney. It was one of the earlier models. I do not recall whether it is a 3-channel or 4-channel.

Q. Approximately what does it cost, Mr. Mitchell, to set up a multiplex system at both ends? A. It is expensive. It costs, oh, I hate to trust my memory for this—

Q. Approximately? A. I would say around twenty-five thousand dollars at each terminal.

Q. At each terminal? A. Yes, sir. That is trusting to my memory.

Q. It is on the light side, isn't it? A. Maybe.

Q. Was it your company's determination and opinion that each of these circuits required capacity which you can secure out of a 4-channel multiplex in each direction?

A. There are perhaps some of them that my company perhaps felt did not require that as of the present time, but

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felt it would require that capacity within the foreseeable [2625] future.

Q. So that ties in with the question we discussed about an hour ago about capacity? A. To that extent, yes, sir.

Q. Was this multiplex equipment at the foreign terminals supplied by your company or the parent company?

A. I am not sure about every case. I believe that each may have supplied some.

Q. But if it was at all supplied, it was supplied by either your company or the parent company? A. Yes.

Q. Would any other system than yours fit at the foreign terminal, to operate with your system in New York? A. I do not happen to know of any. There may be.

[2630] Q. I think you answered this, but I want to be sure. Are any of these multiplex channels to any of these countries, and I will mention Switzerland particularly, utilized for service, or for traffic, or any other purpose to any other country than to the one it was designed to serve?

A. At the moment I have no recollection of such use being made. It is possible for us to do so.

[2639] Q. This morning you listed quite a number of circuits that RCA is operating on a forked basis—so far as I know and the record shows voluntarily so—to various points in the world. You named several at Norway and Finland? A. Yes, sir.

Q. Will there be any more difficulty, or any less [2640] satisfactory service operating on a forked basis from Portugal than on those circuits you mentioned? A. Yes, sir. There will, for the reason that if we don't have to operate for Portugal on a forked basis we are reasonably certain of operating on a printer basis, which greatly simplifies the operation for us.

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[2642] You spoke of forking with Norway and Finland. I believe you agreed with me this morning that Norway is a fairly heavy traffic circuit? A. Yes.

Q. How does it compare with Portugal, if you know?

A. It is comparable with Portugal.

Q. It is heavier, isn't it? A. Somewhat I believe, a little. I think I stated that we don't like the practice of forking circuits that heavy. We don't do it through choice.

[2644] Now, with respect to Italy, when you inaugurated this multiplex service to Italy, postwar, I believe you said 1945 or 1946, there was at that time a competing Mackay circuit. A. I believe there was. I believe there was one listed. I don't know whether it was working or not.

Q. The record will show on that. At that time there were cable connections of Western Union and Commercial Cable at the Azores with the Italcable which operates to Italy. I believe that has been described previously in the testimony. A. Yes.

Q. At Tangier at the same time you installed multiplex, both Mackay and RCAC were operating circuits to Tangier, is that correct? A. I think that is true.

Q. Now, Argentina and England dated back to prewar? A. Yes.

Q. The Netherlands situation, I think, has been pretty aptly described? A. Yes, sir.

Q. As to the Philippines, when you inaugurated the multiplex service, were not Mackay and Globe Wireless competing carriers also operating to the Philippines? A. I am not sure whether they had reentered the [2645] Philippines at the time we commenced the installation of the multiplex there. They are there now. There wasn't much difference in time.

Q. Approximately the same time? A. Somewhere in that general area of time.

Q. Also at that time, or at approximately the same time, there was one cable company, Commercial Pacific Cable

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Company, prewar operated, and since the war has operated to the Philippines? A. It is my recollection that it was interrupted at that time.

Q. At what time? A. At about the time this multiplex went in. I can't say for sure, however.

Q. With respect to France that was a postwar installation of multiplex? A. Yes, sir.

Q. At that time when it was installed, was Mackay operating a circuit or circuits to France? A. I believe Mackay was operating a circuit either with their own mobile station or with a station of PT&T in France.

Q. What time was the multiplex established, if you have any idea? A. In 1935 or '36 somewhere along in there.

[2646] Q. The cable companies of Western Union and Commercial were operating to France? A. I am quite sure they were.

Q. So, as to these places I have enumerated when you expanded your facilities so as to increase your available capacity from one channel to four channels, the facilities by cable and radio which we have enumerated were either there or— A. Licensed to be there.

Q. Yes. I believe China is in this list. Multiplex, China postwar? A. Yes, sir.

Q. Globe and Mackay are both licensed now and prewar to China, is that correct? A. That is correct.

Q. And prewar Commercial Pacific Cable Company operated to China? A. That is my understanding.

[2647] Q. At page 449, you stated that in discussing your plans for postwar, your reasons for going forward and so forth:

"After careful consideration, however, RCA determined to go forward with the plan in the hope that it might be completed as quickly as possible and in any case before the inevitable diminution of traffic which would occur in normal times."

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Now, I can't reconcile that statement with the testimony that you gave in the same connection in Docket 7094, the so-called British Circuits case wherein you said at page 62:

"By Mr. McDaniel: Q. Will this pandora program—" and by the way the pandora program hasn't been mentioned in this hearing, I don't believe. Is that the postwar plans and the program that you— A. Yes. That was a code name assigned to it.

Q. "Q. Will this pandora program enable RCA Communication, Inc. to offer an improved service at lower rates?

[2648] A. It will, and that is the prime objective of the plan. We know that in order to meet the tremendous competition which we face in the future, not only within the international telegraph industry, but the competition from greatly increased international airmail and telephone service, we must handle greatly increased volumes of traffic more expeditiously and at a lower cost."

Now, the part that I can't understand is why you were expecting there, or planning, to handle increased volumes, whereas in your testimony in this case you were rushing this program through before the "inevitable diminution of traffic", using your words. How do you reconcile that? A. I don't think there is any conflict at all. It was our hope to prepare ourselves for operation on a more economical basis, to permit us to operate profitably at lower rates, and as the product of that operating condition, hope that the volume of traffic would increase.

In my opinion that is something strongly to be hoped for in this industry. If we are to meet the competition of the airmail and the telephone, I feel that the essentials which I mentioned there will have to come about.

Q. I get that, Mr. Mitchell, but I still don't understand why you said—and I quote—"We must handle greatly increased volumes of traffic"—[2649] that is what you said in the other case.

In this case you say, "We rushed through the program before the inevitable diminution of traffic." A. Perhaps

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my first testimony there would have been clearer had I said "We must be prepared to handle greatly increased volumes of traffic" in the hope that with the better service and the lower rates such volumes would in time come about.

Q. Is there anything further you care to say about that? A. I think it is adequately covered. I fail to see any conflict in the ideas or thoughts expressed.

By Mr. Werner:

Q. Volumes will have to increase to a tremendous extent, would they not to utilize even a part of the capacity of the system? A. It would have to increase very considerably, yes.

Q. Did you anticipate increases in volume anywhere near the capacity that you planned to now have? A. Not in the early future, no. I did however feel that we should prepare ourselves to cope with such volume in the hope that the improved service and the lower rates as a result of the then hoped for economies would cause the volume to increase. I regret to say that hasn't come to pass yet.

[2663] By Mr. Werner:

[2665] Q. As I understand it, from your previous testimony, Mr. Mitchell, you would prefer not to render a volume press service on circuits other than multiplex circuits, is that correct? A. In general, that is true, yes, sir.

Q. Did you discuss multiplexing the Portuguese circuit? A. Yes, sir. They didn't feel the need of it at that time.

Q. If the circuit were not multiplexed but was printerized, would you nevertheless urge the institution of volume press service? A. We would offer it, yes.

Q. And a conference service? A. Not necessarily a conference service. That would be possible, but I don't believe we would urge that, for the simple reason that I

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don't believe that there is, at this stage of the game, the market for it.

Q. How much likelihood is there that in the event the Portuguese circuit was printexized, that conference service would be inaugurated on that circuit? [2666] A. Very little likelihood I should say unless Lisbon is chosen for some international conference or some United Nations meeting, or something of that nature. As a rule those are the only times when conference service is used to any great extent.

[2668] Q. I don't want to go into the question of your statement that your service is superior to other services, which Mr. Kennedy inquired about, but, taking for granted your statement that you believe your service is superior, do you feel that your service is so superior that you would retain all of your present traffic over these circuits even if Mackay were granted circuits to the points at issue? A. I think that that substantially would be true.

Q. That you would retain the traffic you are now handling? A. Yes, sir. I think that is true.

Q. What explanation can you offer, Mr. Mitchell, for the [2669] exhibit introduced through Mr. Cearley, namely Exhibit 191, which indicates a substantial expectation of traffic diversion from RCA in the event the Mackay circuits are granted? A. Mr. Cearley here has assumed that that traffic would be diverted from us. A large proportion of such diversion would result from what I believe to be the intention of the AC&R company to take traffic away from their cable department and send it through their radio department, and by so routing that traffic, yet, in return, traffic from the foreign terminal which normally would have returned via RCA.

Q. How would that affect the amount of outbound traffic RCA would handle? A. It might not. I don't know. I simply have the feeling that our customers are satisfied,

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they seem to be. It might be that they would give up this particular traffic, give it to Mackay and give us other. I don't know. That is a conjecture in any case.

Q. What I am trying to get clear in my mind, Mr. Mitchell is this: assuming RCAC service is superior to that which would be rendered by Mackay assuming its applications were granted, why would there be any diversion of traffic from RCAC to Mackay? A. Well, I suppose that would come about as a result of the incoming message—and mind you, the incoming message [2670] being one in trade for an outgoing cable message—that that incoming message via Mackay going to the customer repeatedly might cause the customer to return his traffic in the same way. There is a tendency on the part of the public to use the type of service outbound that they receive inbound.

Q. On the other hand, the assumption in your answer is that the return message would be going to a customer who would ordinarily send his message via RCAC, is that correct? A. Yes, sir.

Q. In the event that your service is superior to that of Mackay's, wouldn't he soon switch back to RCAC? A. If there is that much difference in the quality of the service.

Q. How much difference do you think there is in the quality of service? A. I don't know.

Q. Again in connection with service, you know generally the percentages of traffic in each classification do you not—that is percentage of traffic which is full rate and the percentage of traffic which is deferred and nightletter? A. Do you mean in the overall picture?

Q. Overall, yes. A. It does vary with the circuits. It varies quite considerably with the circuits.

Q. Do you have any information with respect to The [2671] Netherlands? A. I can look it up in the response to order 85, I believe, and get it. I don't recall just off hand what those percentages are.

Q. Before you do that, perhaps you can answer the question before looking at the responses. Is it not true

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that the smallest percentage of traffic handled to The Netherlands, to Portugal, and to Surinam, is in the full rate category? A. I would expect that is true, yes.

Q. And that is the category under the present tariffs which takes the fastest service presumably? A. Yes, sir.

Q. No urgent service is now provided by the American carriers—that is correct, is it not? A. Yes, sir.

Q. How important then is speed of service in the international field? A. It isn't as important as we perhaps feel that it is, I sometimes think. I am reasonably sure that the foreigners, or foreign correspondents, don't attach as much significance to quality of service as we in America do.

Q. I mean the speed of service? A. Speed of service, yes.

Q. Would you be willing to state that in the event the [2672] Mackay circuits were granted—that is, the circuits which they are applying for in this proceeding—that you would expect to lose about a third of the traffic you are now handling with the three countries at issue to Mackay? A. I am told by Mr. Cearley that we would suffer substantial losses, and I, personally, haven't gone into it—he has—and I am inclined to take his judgment on it.

[2673] Q. I am a little troubled, Mr. Mitchell, with the emphasis placed on speed of service. That emphasis may be perfectly all right.

I am a little troubled because the statements, not only by yourself but by Mackay witnesses, that the speed of service in the foreign terminals is far poorer than the speed of service in the American terminals? A. I think that is true.

Q. If it is a known fact that once the message reaches a foreign terminal that substantial delays occur before it is delivered, why is there the emphasis on getting that message out of the American terminal as fast as possible.

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I am not criticizing the emphasis but I am wondering why you have that emphasis? A. I presume this applies to Mackay as well as to ourselves: our innate desire to accomplish perfection.

Q. Even though the companies may realize that the speed of service given outbound messages in the American terminal isn't going to affect the delivery time substantially?

[2674] Q. Perhaps not as of today, Mr. Werner. I think that as time goes on, foreigners gradually will become more aware of the desirability of speedy service and improve their own.

[2675] Q. Now, I want to touch again upon the operation of your company to The Netherlands, where you operated four-channel multiplex circuit—well actually you operated one of the channels of the four-channel multiplex circuit? A. Yes, sir.

Q. —and you also operate a morse circuit at the same time, at certain times? A. Yes, sir.

Q. I believe that is shown in Exhibit 173? [2676] A. Yes, sir. It is shown.

Q. Now, in connection with that exhibit, the capacity of your circuit is shown as 10,800 words per hour? A. Yes, sir.

Q. That is the normal capacity, I take it, because you show a 60 per cent figure in that column? A. Yes, sir.

Q. It is true then that if you divided that figure by 5, which is the actual number of channels which could be made available, the result would be 2,160 words per hour per single channel? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. In other words, your one channel on the multiplex could handle 2,160 words per hour, is that correct? A. That I believe is correct, yes.

Q. Now, what is the average load of words per hour, 6 a. m. to 6 p. m. That is 704 words per hour and that includes non-paid words, is that correct? A. Yes, sir.

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Q. Even during your peak hours, would that one channel be insufficient to move the traffic? A. Not in my opinion.

[2681] Q. Is it your position, Mr. Mitchell, that Mackay Radio is, competitively speaking, on an equal footing with RCA Communications, with respect to the handling of traffic to one or more of the points at issue here? That is, competitively speaking, would you say that you had an advantage over Mackay Radio in the handling of traffic? A. Not noticeably, no. Mackay Radio has, well, as you cited a few minutes ago, speed of service in the foreign lands is not taken as seriously as it is in the United States. Mackay Radio, through its sister subsidiary, Commercial Cable Company, has wire lines into each of these places, and is able to render a very competitive service to RCA.

Q. How about inbound traffic? Are they on the same competitive footing with respect to inbound traffic? A. I should say they should be, yes.

[2682] Q. Do you consider that they are on the same competitive footing with respect to obtaining inbound messages from Portugal? A. I should think so.

Q. How would Mackay receive inbound messages from Portugal? A. They receive inbound messages from Portugal by specific routing.

Q. That would be an indirect return, would it not? A. By specific routing it wouldn't be an indirect return.

Q. How would they get messages from Portugal? A. It is my understanding that if a message from Portugal is specifically routed by cable that they would get it.

Q. You are talking about cable. I was talking about Mackay. A. It is hard for me to disassociate the three major components of AC&R because they are so interwoven.

Q. Competitively speaking as I understand your testimony, [2683] the AC&R system, of which Mackay is a component, are on the same competitive footing so far as

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traffic is concerned, to Portugal and The Netherlands? A. Yes, sir.

Q. You have already testified, as I recall, that you believe there is adequate competition in the telegraph business to the three countries here at issue? A. Yes, sir, I do.

Q. Do you know of any country where you would be willing to say that there is not adequate telegraph competition? A. No, sir. If I knew such a country we would go after a circuit there.

Q. Suppose you have already got the circuit there? A. Then I know of no country where there isn't adequate competition.

Q. I suppose that depends on what you mean by adequate. I was thinking in terms of competition within the telegraph industry itself. In your answer did you include airmail and telephone? A. I included airmail and telephone—all means of communication.

Q. Would your answer be different if I limited my [2684] question only to telegraph competition between telegraph companies? A. Oh, perhaps a place like Suva or Tahiti.

Mr. Wendt: Greenland.

The Witness: Greenland, points like that.

By Mr. Werner:

Q. Why do you pick those points? A. Because the traffic load to those points is so insignificant that for any one to operate to them the operation must, in most instances, be at a loss.

Q. My question was: what points do you think there is not adequate telegraph competition, and you mentioned Greenland, Suva and another country—Tahiti. I take it from your explanation, however, that there would be no point in competition to those places. A. Perhaps I should have said I don't know of any point.

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Q. Do you know of any important traffic points in the world that are not served by direct cable connections or by automatic or semi-automatic cable connections? A. There must be many.

Q. Let's take Moscow, for example, Russia? A. Moscow is one.

Q. If either you or Mackay had the only circuit to Moscow, would you state that there would be adequate competition? A. Insofar as the good to the American public is concerned, I would say yes.

Q. I believe you were talking about revenues at that point in that answer, were you not? A. Cost of service to the American public.

Q. But strictly from the standpoint of competition? A. Competition for the sake of competition?

Q. Well, I believe in an answer to a question put to you by Mr. Kennedy, you said that you believe in competition, and that you thought there should be competition between the two media of telegraphy, namely, cables and radio. A. I do, and I think that was the intent of our Congress, as I stated.

Q. Do you believe competition between cable and radio is desirable competition? A. I believe it is desirable competition, yes, sir.

Q. Where you have no cable to a point, and assuming you therefore can't have effective competition, would you still maintain that only one radio circuit to the point is all that is necessary? A. Yes, sir, I would, because I think that competition within the same media isn't necessary.

Q. What I am trying to get at, Mr. Mitchell, is why the distinction between cable competition with radio and [2686] radio versus radio? A. Because as long as cables are in existence they should be operated, I think. It is hard for me to distinguish between cables any more than airmail or any of the other forms of communications. Each is a different medium.

Q. I am not quite sure that I understand your answer. I can see the difference between telephone and telegraph. I

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am not quite sure that I see your distinction between cable telegraphy and radio telegraphy? A. They are simply different means of communications. I think in the course of time it is reasonable to expect that the cables will be abandoned. However, until such time as their usefulness is completely gone, I think that they should continue to be operated. For that reason, that the competition should be maintained as between those two media.

Q. What benefits, in your opinion, flow from competition between cable and radio? A. The preservation of the cable. Many of our people, particularly in the government, seem to feel that we should for security reasons—

Q. In your own opinion? A. In my own opinion?

Q. As a person who has been in the communications industry for many years? A. As for myself, the principal difference is from the [2687] standpoint of flexibility and the ability to handle much greater volume. If the cable were as flexible as the radio and could cope with all of the foreseeable volume then perhaps it wouldn't be necessary. However, we know that that isn't the case. We know that the cable is subject to interruption, not only from the standpoint of being cut by an enemy during war time, but if you recall, I think in 1928 a serious upheaval in the ocean bed interrupted it, not for an hour or a day but for a long time. To guard against such situations as those, I think that both forms of service should operate at each particular place.

Q. I believe you stated that you thought that in the not too far distant future, that cable communication would be given up as a means of communication by telegraph? A. Ultimately I think that is true.

Q. As I understand your testimony, you are of the opinion that that would be no great loss as far as communication is concerned. A. No, sir. I don't think it would be any great loss.

Q. Then why do you think competition between cable and radio is desirable? A. I think it is desirable solely because, on the one hand, the American public—I say "The

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American Public": the Americans have investments in cables that still operate. I don't presume to be sitting here pleading the case for continued use of the cables. As far as I personally am concerned, [2688] we could close them down tomorrow.

Q. Why is competition between cable and radio desirable? A. I haven't made myself clear; it is very evident. My feeling is this: that as long as the cable is in existence, there should be some competition between the cable and the radio. When the cable disintegrates and falls apart, and is not replaced, as I am reasonably sure it will not be replaced, then, as you say, I don't think there would be much loss.

[2689] Q. Just to get the positions of the two companies clarified: is it the position of your company that further duplication of circuits which RCA Communications already has, should not be permitted? A. Yes, sir.

Q. In all cases? A. Yes, sir.

[2698] Q. I am not clear, Mr. Mitchell, as to your testimony regarding the reason for forking the Finland circuit with the Norway circuit, inasmuch as Norway is a fairly substantial traffic point. A. It is a substantial file whereas the Helsinki circuit is not. They are countries of similar nature. The Finland circuit doesn't warrant operation of full time circuit. It is entirely agreeable to the Norwegians that we operate the Finnish circuit jointly and for that reason we do so.

Q. That is at your own option. In other words, it is because you want to fork that circuit that you are forking it and not because the foreign administration wants to fork it. Is that correct? A. That is my understanding, but it is with the concurrence of the foreign administration.

Lon A. Cearley, for Appellant—Direct.

[2703] LON A. CEARLEY, was recalled as a witness, having been previously duly sworn, was examined and testified further as follows:

Direct examination (resumed) by Mr. Hawkins:

[2707] By Mr. Hawkins:

Q. Will you explain Exhibit No. 191-A? A. Exhibit 191-A is a statement showing the computation of estimated revenue diversion to Mackay Radio and Telegraph Company from split circuit operations as was shown in Exhibit No. 191. It will be noted that the exhibit is made up of three separate sections. One is the particulars, the second section is the computation involving [2708] outbound traffic, and the third section is the computation involving inbound. Take Holland as an example for my explanation. It will be noted, under item 1, that the number of actual words handled by Mackay Radio, U. S. originations and transiting, taken from FCC Exhibit X-7, FCC Docket No. 8230, was 1,507 words. Item 2 is the number of equated words transmitted by Mackay Radio.

It will be observed there that in the case of the outbound we equated the words by multiplying line 1 by 42 per cent.

In other words, the equated words were 42 per cent of the total words, or 633 equated. The explanation of the 42 per cent, and incidentally in the inbound we used 43.5 per cent to equate to full-rate words—in the note it will be observed that the factors of 42 per cent and 43.5 per cent were determined by the equation of total outbound and inbound words for the industry, and we used FCC Exhibit X-7 in Docket 8230 for purposes of determining the percentages referred to. Item 3 is the number of equated words handled by RCA taken from Exhibit 191, column B, and FCC Docket No. 8777.

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The total outbound equated words to Holland, 436,933. Item 4 is the total number of equated words available which is the 436,933 added to the 633 equated words of Mackay gives a total of 437,566 equated words. That is the [2709] number of equated words estimated to be shared by Mackay Radio if a split circuit is operated by that carrier. The outbound wordage is determined by line 4 times the 36.9 per cent covered in my previous testimony, gives a total of 161,462 words. Item 6, the number of equated words now being handled by Mackay Radio line 2 is subtracted from the total leaving item 7, the number of equated words estimated to be diverted from RCA if Mackay Radio operates circuits is line 5 minus line 6, would give a total of 160,829. Eight is the per cent of estimated diversion from RCA to Mackay Radio—line 7 divided by line 3—where it gives 36.1 per cent. Item 9, RCA revenue, Exhibit 191, column C, FCC Docket 8777, the revenue is \$85,025.

Item 10, the revenue related to estimated diversion from RCA to Mackay Radio line nine times percentages of line 8 gives \$31,297.

Q. Mr. Cearley, at the close of your direct examination, the Commission Counsel requested a cost computation with respect to the 11 points shown on Exhibit No. 192. This computation was to be prepared on the same basis used in Exhibit 191.

Have you prepared such an exhibit? A. Yes.

Q. Is this a copy of that exhibit (handing to the [2710] witness). A. Yes. This is a copy of the exhibit.

Q. Mr. Cearley, in the preparation of Exhibit 191-B did you employ the method set forth in the Exhibits 193, 194 and 195? A. Yes. And this method is the same as used in the preparation of Exhibit 191.

Q. Will you explain in detail the method of computation on Exhibit 191-B? A. Exhibit 191B shows the estimated

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gain or loss from operations, first of RCA operations of split circuits, second, ~~revenue~~ effect from inclusion of Mackay traffic volume on a single circuit basis. This exhibit is based on data for [2711] the first six months of 1947. In column A is found the name of the circuits involved. In column B is the number of equated words actually handled by RCA over the eleven circuits. Column C is the number of equated words, RCA traffic volume plus Mackay traffic volume on a country basis.

Q. Just one question, Mr. Cearley: in column C, did you take only the Mackay traffic volume terminating in each of the particular countries? A. That is correct. To column B this country traffic of Mackay was added, giving column C.

Q. Will you continue now with your explanation? A. Column D is the revenue to RCA at rates made effective April 28, 1948 from handling the traffic volume shown in column B. It is to be observed that in the footnote is this statement:

"Includes deduction for estimated landline tolls to Western Union."

Mr. Werner: How did you arrive at the estimate for the landline tolls, Mr. Cearley?

By Mr. Hawkins:

Q. Mr. Cearley, on the question of Mr. Werner: did you arrive at the estimated landline tolls to Western Union on the same basis that you used with respect to Exhibit No. 191? [2712] A. Yes.

Mr. Werner: O. K.

By Mr. Hawkins:

Q. Proceed. A. Column E is the revenue to RCA; revenue made effective April 28, 1948, from handling traffic volumes shown in column B.

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I might say that that is the estimated revenue that would result if we had the added volume. Column F is cost of operation to handle traffic volumes shown in column B. Column G is the estimated cost of operation to handle traffic volume shown in column C. Column H is the gain or loss, net effect of column D less column F. Column I is the estimated gain or loss, net effect, result column E less column G. It is to be observed that from present operations it is estimated that the net effect from operating these circuits is an estimated profit of \$193,578, while assuming a single-circuit operation the net effect would be an estimated profit to the RCA Communications system of \$1,117,403.

Q. Is it reasonable to state that the difference between the two figures—by that I mean the figure in column H and the figure in column I—would represent the gain from single circuit operation? [2713] A. Yes. That is the estimated gain to the RCA system, if we were permitted to handle additional volume of traffic.

Mr. Gibbons: Mr. Commissioner, before cross examination of Mr. Cearley is underway, and since Mr. Mitchell has not been returned to the stand, may we inquire if [2714] RCA has available the information which Mr. Mitchell undertook to obtain, first at page 2307 of the record where I believe Mr. Mitchell indicated he would obtain the date that the RCA printer operation with Lisbon was discontinued.

Mr. Mitchell: The Portuguese printer operation ceased in the latter part of September. There are several intermittent changes back and forth before it was finally cut off completely in the latter part of September.

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[2715] By Mr. Hartman:

[2726] Q. My next question is: On that percentage basis, why, in your opinion, is RCA handling more inbound traffic than it is handling outbound traffic? A. Of course, the distribution of traffic inbound is made by the foreign administration and they are responsible for the distribution. For that reason we get the percentage of traffic that is allotted to us.

[2727] Q. Speaking of Holland—The Netherlands—your correspondent in The Netherlands is the Dutch Administration of Posts & Telegraphs, is it not? A. That is correct.

Q. Does that organization also operate the land lines within The Netherlands? A. It is my understanding that they do.

Q. Have you heard the testimony in this case that the cable companies receive only traffic filed with them? A. Yes, sir.

Q. —or specifically routed via them? A. I have heard that.

Q. So that your proportion of the outbound traffic from The Netherlands, inbound to the United States, in that distribution if you get whatever your quota happens to be and your proportion happens to be, in effect that means that you get all unrouted traffic. Is that not true? A. Well, we get the traffic that the foreign administration wants to give us.

Q. And the foreign administration has no other correspondent in this country? A. That is right.

Q. Now, turning to Exhibit 166, will you similarly indicate, for the first six months of 1947, the outbound [2728] and the inbound percentages handled by RCA Communications Inc.—that is, in the case of Portugal. A. The outbound percentage for RCA—outbound is 49.4 percent, while the inbound percentage is 80.2 percent.

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Q. Again, I would like you to explain, in the case of Portugal, Mr. Cearley, what in your opinion is the reason for RCAC handling approximately half of the outbound file, but handling over 80 percent of the inbound file. A. The same reasons as stated in the case of The Netherlands.

Q. That is, that substantially all of the traffic coming in this direction must be controlled by the radio correspondent of RCA at the other end. Is that true? A. Well, it apparently has a greater volume of the traffic at its disposal inbound.

Q. In the absence of a Mackay direct circuit, or some other Mackay agreement such as the one through Lima with the Portuguese, RCAC would be the only correspondent of the Portuguese Radio Company in the United States. Is that correct? A. Well, RCA is the direct correspondent. As you pointed out, Mackay could receive traffic in other ways than by direct circuit.

[2738] Q. You do not believe that service is the only consideration which affects the ~~growth~~ of a radio telegraph carrier. A. Of course, the greater service has an effect but there are other factors coming in which might affect it. I might refer to Mr. Towers' testimony on pages 388 to 394 in which he speaks of the availability of traffic to direct circuits as being a factor.

Q. You agree then with Mr. Towers' statement I assume, that it is through direct circuits that the inbound file becomes available. A. Well, the direct circuit, of course, has some effect on it, but there are numerous factors that come in to determine whether or not a company gets traffic. Some of it is real and some of it is not real perhaps.

Q. Could you indicate what, in your opinion, are some other factors other than service and the cooperation of the foreign correspondent? A. Of course, relationship with your customer has something to do with it. Habit might

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also affect whether or not traffic is turned over to one company or another. They are all wrapped up in one thing. They are numerous things that might affect one individual—that is, one thing might affect one individual while another would affect another.

[2739] Q. Relations with your customers, and customer habit—would you expect them to be based at least in part on the service? A. Of course, service is a factor to be considered.

[2740] Q. With reference to your Exhibit 178, Mr. Cearley, you indicate on your chart the total outbound and inbound to Portugal combined including transited traffic. You [2741] refer to that chart, I believe, on page 500 of the transcript, as indicating that there is keen and substantial competition in communications service with Portugal. Now, we have noted a few moments ago that inbound from Portugal during the first six months of 1947, RCAC handled 80-some percent—80-point-some percent—of the total inbound file: Do you believe that that reflects keen and substantial competition for Portuguese traffic in the inbound direction? A. I would say that competition that took 20 percent of the traffic would be fairly keen.

Q. To what point do you think competition would have to be reduced to cease being keen? A. It is a question of degree. There could be keen competition with only a small percentage.

Q. In other words, there can be a keen effort on the part of competitors without a substantial result. Is that your point? A. Of course, there can be the effort to obtain the traffic. Normally that could be measured by a percentage later.

Q. Will you refer to your Exhibits 180 and 179, please? Will you indicate the percentage on 179 of the total outbound file of RCAC in 1936, as contrasted with 1946? [2742] A. The percentage of outbound traffic in 1936 for RCA was 16.9. In 1946 it was 56.9.

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Q. So that RCA increased its participation from 16.9 to 56.9 in an outbound direction over a ten-year span. Is that correct? A. That is correct.

Q. Will you turn to Exhibit 180 and draw a similar comparison for the inbound traffic comparing the years 1936 and 1946? A. The 1936 percentage of participation, RCA Communications was 37 percent, 1946 was 77.7 percent.

Q. In view of your feeling that competition for Portugal traffic is keen and substantial, what do you believe those figures indicate in respect to the success of the efforts of the cable carriers to retain their positions? A. The Commercial Cable Company, for example, maintained the same—well, in fact, increased its load slightly from 1936 to 1946. Mackay increased its load some.

Q. What about the percentages involved of the inbound volume? A. The percentage, AC&R group 1936 was 32.2. It is now 4 percent for 1946. But they did handle still a substantial volume of traffic.

[2743] Q. Will you indicate also for the Western Union what the situation was? A. The Western Union percentage in 1936 was 30.8; for 1946, 18.3.

Q. You note that the volumes of the AC&R group and the Western Union have grown during that period. Has the total over-all volume of traffic to and from Portugal also grown during that period? A. Yes, it has grown.

Q. Will you indicate the growth of RCA in the inbound direction on a paid word basis between 1936 and 1946? A. RCA Communications, Inc., in 1936 was 104,826; 1946 was 1,914,808.

Q. So that the exhibit reveals, does it, Mr. Cearley, that the AC&R group have increased from 91,000 words to roughly 98,000; Western Union from 87,000 approximately, to 451,000; and RCA from 104,000 to approximately 2,000,000? A. Yes.

Q. Would you say from that that the cable companies have been able to maintain their position with respect to traffic inbound from Portugal, despite whatever competitive

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efforts they may have made? A. They have not maintained their percentage condition but they have maintained and have been able to in- [2744] crease their load.

Q. But at a very much slower rate. A. That is correct.

Q. And a very much less rate— A. That is correct.

Q. —than has RCAC. A. That is correct.

[2761] By Mr. Hartman:

[2763] Q. In this group of exhibits, Mr. Cearley that you have introduced showing the traffic statistics to The Netherlands, Portugal and Surinam, if I may summarize from the exhibits themselves, for the first six months of 1947, your exhibit 187 shows for Holland, in the case of The Netherlands, radio has 29.8 per cent of the total outbound volume as opposed to 51.5 per cent reflected in Exhibit 188—that is, in the inbound direction. Your exhibit 179 indicates that with respect to Portugal, RCAC has 49.4 per cent outbound. [2764] A. Just one minute please. All right.

Q. With respect to Portugal your Exhibit 179 indicates that RCAC has 49.4 per cent of the outbound volume as opposed to 80.2 per cent of the inbound volume reflected in your Exhibit 180.

In the case of Surinam, your Exhibit 183 indicates that RCAC has a total of 47.7 per cent outbound, as contrasted to 100 per cent inbound as reflected by your Exhibit 184, is that correct? A. The percentages you have enumerated are correct.

Q. The question was raised as to each individual circuit. In all of these cases it appears that RCAC handles a much greater percentage of the inbound file than it does of the outbound file to those countries.

Do I understand your explanation to be that that is because the traffic is at the disposal of the Administration or the company operating RCAC circuit at the foreign end? A. Yes. The foreign administration has the say as to who shall get the traffic.

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Q. In each situation then, Mr. Cearley, is it not also true that a radio carrier has a substantially more favorable inbound position than does a cable carrier? A. That would depend to some extent on the operations of the cable company. For example, the amount of solicitation in the foreign country.

[2765] Q. I am talking primarily, Mr. Cearley about the operating results. They indicate that cable actually enjoys a very much smaller portion of the inbound volume than it does of the outbound volume, is that not true? A. I would say in most instances that is true. There might be exceptions.

Q. In any of these three cases is there any exception to that? A. I don't recall any exception in the three cases.

Q. And you also indicated, I believe, that it is a matter of good business judgment if the foreign company or administration controlled the inbound file and received a higher proportion of the toll by handling via radio, it would naturally do so, is that correct? A. No.

Q. If it is their system you would expect them to use it? A. If it is to their advantage and all other things being equal I would expect them to.

[2808] Q. Mr. Cearley, do you have before you your Exhibit [2809] No. 190? A. Yes, I have the exhibit before me.

Q. It is entitled, "Rate History of Points Served Directly by RCA Communications, Inc. or Mackay Radio and Telegraph Company"? A. That is correct.

[2810] Q. In virtually all of the countries listed, Mr. Cearley, it is not true, or is it true, that there is indirect radio competition? A. As to most of the countries, there is some form of indirect radio competition.

Q. And the paragraph at the bottom of the page would indicate that the benefit of rate reductions which is usually considered to result from competition has been received in

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these cases irrespective of the absence of direct radiotelegraph competition, is that true? A. These benefits have been received in cases where there were not other direct circuits to the same point. As to what effect the indirect may have possibly had in some instances, I did not consider.

[2811] Q. Have any of the rate reductions been made to points to which there was no competitive situation?

Mr. Werner: You mean as between radio or—

Mr. Hartman: As between any form of telegraph communications?

A. I suppose there was some form of indirect routing to those places, but I do not think it had the effect of causing the rate decreases.

Q. Is it your position then that the rate decreases shown on this exhibit were in no wise attributable to competition, either as between radiotelegraph carriers or as between radiotelegraph and cable carriers? A. Some of the early reductions, of course there was competition at that time between radio and cable, but there were no other direct radio circuits at that time. Yet there were reductions.

Q. Would you consider the reductions competitive reductions—reductions as a result of competition? A. Well, naturally there was competition between the cable and the radio in those instances when the radio circuits were opened, but there was no competition as between radio and direct circuits, in a number of instances.

Q. Glancing at the table it would appear that the heaviest reductions for the period shown in this exhibit occurred in 1945 in the number of countries affected, is

[2812] that true?

The Witness: There was a part of the question I didn't understand. Read that.

(Question read.)

A. That is true.

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By Mr. Hartman:

Q. In respect to the reductions for which you have indicated an RCA initiation, would you consider those reductions competitive reductions? Would you consider them resulting, that is, from competition? A. In most instances the reductions in 1945, of course, were to places where there was competition. As to just what extent, what part it played, I don't know in each and every instance.

Q. Docket 8230, the recent rate case, Mr. Cearley, or rather the early part of the rate case, at page 691, in referring to those reductions, the following comment was made as to those specific reductions in 1945 and 1946. The question was asked you:

"Those rates were put in voluntarily by RCAC, were they not?"

Your answer: "I do not know that you could say they were wholly voluntary."

What did you mean by that answer? A. I do know that there was some discussion [2813] at least of the suggestion by the Commission representatives that something should be done, upon reviewing the earnings statements of RCA Communications. Just how strong that pressure was, I can't say, because I did not carry on any negotiations at that time.

[2838] LON A. CEARLEY resumed the stand and testified further as follows:

Cross examination (resumed) by Mr. Hartman:

[2847] Q. Now, in your Exhibit 191-A, you estimated for the purposes of this Exhibit a diversion of something in excess of one-third of your volume of traffic to these

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three points. If you reduced your volume of traffic by one-third, should not the cost of operating the circuit shown in Column B be considerably reduced? A. No, not show the effect on RCA system-wise, because if you reduce the volume of traffic to the extent that the paid words would be reduced, then, of course, the cost available to a particular circuit would be changed, but that would likewise mean that other circuits would get a higher proportion. So the effect on the company as a whole would not be changed.

Q. So that what it amounts to is that you are using the formula, so long as it applies only to the first six months of 1947, but you are changing from the formula for purposes of allocation as to any other given set of conditions; is that true? If you applied the formula on a straight line basis right down the line, would the cost of operating the circuit not be reduced by a reduction in traffic volume? A. Naturally, if you had a reduction in traffic volume, the allocated costs to a particular circuit would be changed, but the overall cost would not be changed. Then the actual effect on the system as a whole, that is, on RCA's system would not change.

[2849] Q. So that what it amounts to is that based on the first six months of 1947, you use an allocation basis under the formula which you describe. Then when you assume diversion to Mackay Radio, you use an entirely different method of allocating the cost to RCA Communications, Inc.; is that true? A. When I consider the traffic that would be expected to go to Mackay, then the remaining part of the exhibit shows the effect on the system.

Q. So that Column D does not purport to show the cost of Mackay diversions on these circuits or to provide a basis upon which the cost can be computed? A. Column D shows the allocated cost on the traffic and traffic operations of RCA Communications for the first six months of 1947.

Q. But it does not show the allocated costs after the diversion of traffic to Mackay? A. It does not show the

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allocated costs that would be to these circuits after the traffic load is changed. However, it does still reflect the impact on RCA Communications' system.

[2855] Q. * * * In respect to this formula which you have used, Mr. Cearley, in your computation under Column D and the letters which were introduced into evidence leading up to the establishment of this formula, I would like to call your attention to Exhibit 193, the letter of 15th of September, 1947, from the Federal Communications Commission addressed to RCAC, to your attention. It refers to Docket No. 7974. The last sentence in the first paragraph reads: "All present realized that refinements were avoided in the procedure suggested in the interests of economy and with the thought that the study as suggested would serve the purposes of the present proceeding."

[2856] What did you understand to be the purposes which the carriers were attempting to serve through the preparation of an agreement upon this formula? A. It was a method of determining the relative circuit costs of the various companies participating in the General Circuits case.

Q. Is it true to say that recognizing all the carriers had certain objections to the formula, it was intended primarily to provide some basis of comparison as between the radio telegraph carriers of their costs of operation? A. Yes, it was intended as a basis of comparison.

[2857] Q. It is recognized, however, by all of the carriers, and, I believe, by the Commission, is it not, that that is a theoretical formula for comparative purposes? A. It is a theoretical formula, yes, and, of course, as such can be used for comparative purposes.

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[2859] Q. I would like to refer to your testimony in the rate case, Mr. Cearley, page 2713.

Mr. Hawkins: Is that the further hearing, Mr. Hartman?

Mr. Hartman: This is the further hearing in January, Docket No. 8230. At the bottom of page 2713, you were asked the question by Mr. Cohen:

“Q. In your various forecasts have you taken account of the possible effects on RCAC’s traffic and revenues of the various grants and denials of circuits in the Commission’s recent British Commonwealth circuit case? A. No, no effect was given to anything affecting an individual circuit. My projection is made on the operations of the company as a whole.

“Q. Does that mean you think no effect should be given to the grant or denial of particular, grant or loss of particular circuits? A. Well, I think that if you tried to determine the various factors affecting an individual circuit and project those you get lost, because it is difficult to project. Perhaps in other instances we may be benefiting from some other happening or some other increase on a circuit. It is difficult, near impossible, to make a projection based on individual circuits.”

Now, if it is impossible to project the loss which RCAC would suffer if it lost one of the British points, how can you [2860] now, except on a purely theoretical basis, project the loss which would be incurred if Mackay opened new direct circuits?

A. The testimony in Docket 8230 had reference to the revenue only. It was in the projection of revenue for the system, and there it was not thought advisable to try to go into the minute detail of making a projection by circuits. The variations in the operations of circuits are too great to attempt in this kind of computation.

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Q. Are we not talking about revenue in respect to this Exhibit 191? A. We do have revenue in 191, yes. But the allocation in here is made of costs, and not of revenue.

Q. I may have misunderstood 191, Mr. Cearley, but Exhibit 191-A, I believe, computes a specific loss of revenue. A. That is true.

Q. I might also point out that the question that Mr. Cohen asked you—I am not sure what you meant in your answer—but the question Mr. Cohen asked you was:

“Question. Have you taken account of the possible effect on RCAC’s traffic and revenues?”

And your answer was:

“Answer. No, no effect is given to anything affecting an individual circuit.”

So I assume that you were discussing traffic as well as revenue. You may not have been. [2861] A. We were discussing the projection of revenues of the company, that for Docket No. 8230 was done on an over-all basis and it was not made on a circuit basis.

Q. As a matter of fact, your testimony indicated that it is nearly impossible to do so on a circuit-basis, did it not? A. It would be quite a job to try to make a projection for a year as to just the exact traffic and resulting revenue that you would get from a circuit, particularly when you were trying to determine an over-all result. You would have to take into account all factors of all circuits, and it would be quite some job.

[2874] Q. I am not quite sure I understand that, Mr. Cearley. What is the difference between the percentages shown and the percentages used in 191-A? A. You will notice on Exhibit 192, the development of the percentages is shown that appear in Column F.

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Q. That includes all the traffic that Mackay has handled and RCAC has handled to the point which you use as the basis of your percentage calculation? A. That is right. And the percentages are the per cent of traffic that Mackay would handle after taking traffic from [2875] RCAC communications.

Mr. Werner: That is, percentages of the total traffic handled by both companies; is that right?

The Witness: That is right. It is the participation percentage of Mackay, and deducting from that the traffic that they did handle would indicate the traffic volume estimated to be diverted.

By Mr. Hartman:

Q. So that assumes, then, Mr. Cearley, that all of the traffic that Mackay handled to these countries was diverted from RCA Communications, Inc.; is that correct? A. No. No consideration was given to that in that respect. We simply said that Mackay would participate in the traffic to this extent. Therefore, they would take from RCAC Communications traffic to bring them up to that percentage.

Q. If on Exhibit No. 192 the traffic shown to Mackay was not diverted from RCAC, how can that percentage be used as the basis for indicating what percentage would be diverted from RCAC in these three instances? A. As stated in my direct testimony, I presume that there was strong competition between cable and radio, and I presume further that if Mackay were granted direct circuits to these points, they would take this volume of traffic away from RCAC Communications.

Q. So that in Exhibit 192, in arriving at your per- [2876] centages, it naturally follows, does it not, that if the percentage figure is accurate, all of the traffic shown to Mackay in 192 must have been diverted from RCAC? A. Well, Exhibit 192 simply shows the relative proportion of traffic now between the two radio carriers.

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Q. What I am trying to get at is, if all of that traffic was not diverted from RCAC, why is the percentage 36.9 a proper percentage to apply? A. It is reasonable to assume that since there is competition between cable and radio, RCA handled them operating direct circuits to these points. Without Mackay operating to these points, it is reasonable to assume that RCAC would have handled that traffic.

Q. Is it not also true that in the case of all these points, there is competition between cable and radio? A. To a number of points there is competition between cable and radio.

Q. In respect to such points, then, would not your reasonable assumption naturally follow in the case of such other points if it is to be applied in the case of Holland, Portugal and Surinam? If you are going to assume in the case of Holland, Portugal and Surinam, that all Mackay traffic is diverted from RCAC and you are going to use the percentages arrived at in your percentages in Exhibit 192, must you not also apply in Exhibit 192 the same assumption that you applied to Exhibit [2877] 191? A. I just stated that I thought it was a reasonable assumption that RCAC Communications would have handled this traffic had they been the only radio company operating to the points.

Q. Is that same reasonable assumption applicable to Exhibit No. 192? A. That is true.

Q. So that if your assumption is correct, all of the traffic shown for Mackay on Exhibit 192 would have been handled by RCAC, had there been no Mackay Circuits? A. In my study, I have assumed that that would be true, particularly traffic to the given countries. As to some transiting traffic, I have not made a determination on that. For example, in Exhibit 191-B, we have only used the country volume of traffic there of Mackay.

[2878] Q. Now, on Exhibit 192, Mr. Cearley, it would appear from a cursory review of the figures that there are

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a number of points involved which vary extremely from the averages arrived at. That is, some of them are higher in favor of Mackay and some of them are lower; is that correct? A. That is correct. A considerable number of them are higher and some are lower.

Q. Have you any reason to believe that in the case of Holland, Surinam, and Portugal, the average would apply as opposed to those percentages which would be higher or lower? Or have you just assumed the average as some means of arriving [2879] at the conclusion? A. I have assumed that the average is a conservative ratio to be used.

[2883] With respect to your assumption that all other traffic which Mackay does handle to these points will come from RCAC, or will handle to these points will come from RCAC, I would like to refer you to Mr. Mitchell's testimony at pages 2434 and 2435 of this record, at which Mr. Mitchell, in respect to the superiority of the RCA service stated that he believed that RCAC would retain the traffic it is now handling. If Mr. Mitchell's opinion as to the retention of the traffic by RCAC is correct, then the assumption that all of Mackay's traffic must come from RCAC must necessarily [2884] be in error; is that not true? Or can you rationalize the two views? A. I think it is very definite from the record that Mr. Mitchell was talking of service considerations, and as he later explained, he did not consider other factors which I had taken into consideration.

Q. But if your service is superior and if through superior service Mr. Mitchell would expect to retain the traffic, what other factors could possibly result in the diversion of one-third of RCAC's volume and the resulting total of Mackay's volume as a diversion from RCAC? A. The experience on the circuits actually operated by Mackay as direct circuits in competition with RCA Communications does show that they have taken a substantial portion of traffic, and I believe Mr. Tower has pointed out in his testi-

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mony that availability is one of the factors. There could be several others that would tend to make for diversion of traffic from one company to another, in spite of the service angle.

Q. Does that mean, then, that you disagree with Mr. Mitchell's view that RCAC's superior service will permit it to retain its present volume of traffic? A. I agree with Mr. Mitchell that the traffic would not be lost purely from a service standpoint. However, I still am of the opinion that there are other factors that would affect the diversion of traffic as between two carriers.

[2885] Q. On page 556 of the transcript in this proceeding, Mr. Cearley, with respect to the losses you would anticipate from the operations of the three circuits in the event of Mackay's direct operation to these points, you stated in the middle of page 556 that "you conferred with the Vice President in Charge of Engineering, and with individuals in the Operations Department whose responsibility it is to determine equipment and personnel necessary for each circuit operation."

Was that the basis upon which you made the determination that there would be no reduction in operating costs to RCAC in the event of Mackay's direct operation? A. That is correct. I conferred with individuals in the Operations Department and also with the Vice President and Chief Engineer as to what the operating conditions would be, assuming the loss of volume of traffic which I had estimated we would receive, and after receiving their opinion, then on that I based my conclusion that there would be no reduction in operating expense.

Q. So that assuming a lower volume of traffic but the same operating expense attributable to the circuit, is it fair to say that the formula used does not reflect the actual cost of operation of the circuit? A. You speak of the formula. The formula is merely the method of allocation.

Q. And it does not purport to represent actual operating [2886] costs? A. It is as good a basis as has been brought up for consideration.

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Q. But if the formula is followed where you have lost traffic volume to Portugal, Holland, and Surinam, wouldn't the formula applied to the new situation result in lower operating expenses? A. If you used a reduced volume of traffic in the allocation of costs to circuits, there would be reflected against a particular circuit some reduction in operating costs. However, that would not show the complete effect on the company as a whole.

Q. We are talking about the individual circuits, and it is the individual circuits to which we are applying the formula.

A. The formula applies to the distribution of expenses to all circuits.

Q. Yes, I understand that. A. So what expense you would take out of one circuit, you would have to add to another. Just to the extent or exactly how it would work percentagewise, I can not at the moment tell. But if you have a given amount of expense, company-wide, and you allocate that on a basis of paid words, then a reduction in paid words would assign a slightly higher allocated cost per word, but to the circuit where the reduced volume applied, there would be less cost allocated to that [2887] particular circuit. But you have not changed the over-all operating conditions of the company. The expenses would have to be borne, and would be assigned by use of the formula to other circuits. And the final result would not be changed.

Q. As I understand it, then, your position is that rather than the effect on an individual circuit, you must consider the effect on the over-all operations of the company; is that correct? A. That is true.

Q. Now, in that connection, Mr. Cearley, I would like to draw a little comparison, looking at the over-all effect of Mackay's operations on RCAC over a period of years. In order to facilitate that, I would like to refer to Exhibit 156 in this case, reflecting the Mackay direct circuits, and Exhibit 160, reflecting the RCAC traffic volume, and I would

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like you, if you will, at the same time, to refer to Exhibit No. 144 in the rate case, page 2, Docket 8230—

Mr. Hawkins: Mr. Hartman, is there not an exhibit in this case that we could refer to? Is not that Exhibit 62?

Mr. Hartman: Yes.

By Mr. Hartman:

Q. Would you refer, please, Mr. Cearley, to Exhibit No. 61, page 2, and supply the total operating revenue and the net operating revenues? Just make it the net operating revenues. For the moment just let us limit ourselves to that, [2888] Exhibit 61, the net operating revenues, page 2.

Now, Exhibit 156 shows that in the year 1938, for more than half of the year, Mackay operated direct radio telegraph circuits with seventeen foreign countries. Exhibit 160 shows a total volume of wordage of RCAC of roughly 57,800,000. What was RCAC's net operating revenue in that year, 1938? A. The net operating revenue shown on page 2, Exhibit 61, for the year 1938, was \$624,000.

Q. Now, Exhibit 156 reflects the first change in Mackay's total over-all circuits to the figure of 18 in 1941, and during that year, RCA Communications, Inc., handled 118,700,000 words, as indicated on Exhibit 160. What was the net operating revenue of RCAC in that year? A. The net operating revenue shown for the year on Exhibit 61 was \$3,081,000.

Q. Now, the figure of 18 direct circuits continued through 1942, as shown by Exhibit 156. In 1943, Mackay shows the operation for over half of the year to 23 foreign countries. Exhibit 160 reveals the total volume of RCA traffic in that year was 113,143,000 words.

Commissioner Jones: What was that statement again?

Mr. Hartman: In 1943, Exhibit 156 shows Mackay direct circuits to 23 countries. The 1943 traffic

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volume of RCA was 113,143,000 words, as shown by Exhibit 160.

[2889] By Mr. Hartman:

Q. What was the net revenue in 1943, as shown on your Exhibit, Mr. Cearley? A. The net operating revenue as shown on Exhibit 61 for 1943 was \$2,618,000, a substantial decrease from 1941.

Q. Now, in the year 1944, Exhibit 156 shows 26 Mackay direct circuit countries, and in that year RCAC's word volume was 152,000,000 words. What was the net revenue in that year? A. The net revenue, or net operating revenue, shown on Exhibit 61 for the year 1944 is \$3,847,000.

Q. What was that figure again, please? A. \$3,847,000.

Q. Which was roughly \$800,000 higher than 1941; is that correct? A. That is correct.

Q. Now, in the year 1945, Mackay shows 33 direct circuit countries, in Exhibit 156. RCAC's total word volume, as shown by Exhibit 160, was 228,200,000, roughly. What was the net revenue in that year, 1945? A. The net operating revenue shown on Exhibit 61 for 1945 was \$6,444,000.

Q. Now, in May of that year, are you aware that there was a rate reduction? A. That is correct.

[2890] Q. In 1946, exhibit 156 shows 38 direct circuit countries for Mackay. Exhibit 160 shows 232,700,000 words for RCA Communications, Inc. What was the net revenue in that year? A. The net operating revenue shown on Exhibit 61 for 1946 was \$2,431,000.

Q. Now, again, in 1946, are you aware of the rate reductions which were effected on May 1st and on June 1st? A. Yes. There were reductions put into effect at those dates.

Q. It would appear, Mr. Cearley, in summarizing these exhibits, that as of 1938, Mackay had 17 direct circuit countries; in 1945 it had 33 direct circuit countries; from Exhibit 160, it appears that in 1939, RCA Communications,

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Inc., had 57,800,000 words, as compared with 228,200,000 words in 1945, and that in 1938, RCAC had a net operating revenue of \$624,000 and in 1945 a net operating revenue of \$6,500,000, roughly.

Does that reflect that RCAC, if you consider the proper standard to be on the over-all operations of the company, was adversely affected by the Mackay competition in its growth from 17 to 33 circuits? Was that particularly harmful to RCAC? A. On the basis of the assumption that we discussed regarding Exhibit 191, I believe it was. The traffic that [2891] Mackay did take probably would have been handled by RCA Communications, and there possibly could have been additional rate decreases.

Q. You did testify, did you not, in connection with Exhibit No. 191, that the only proper consideration was the over-all effect on the operations of the company? A. That is true.

Q. Now, with respect to the years 1946 and 1947, 1946 reflects an increase in RCAC's traffic, and from 1946 to 1947 indicates a general decrease in RCAC's traffic and a decrease in revenue to what I believe was a loss position in 1947, if I am correct. To what did you attribute that change in your testimony before the Commission in Docket 8230? A. That change was attributed mainly to the effect of the reduced rates and the higher operating costs.

Q. Your Exhibit 99-A in Docket 8230 reflects, I believe, an estimate of the effect of the rate reductions made during 1945 and 1946. Based on traffic volume for the last quarter of 1946, projected to an annual basis, it reflects a total effect on an annual basis of a net decrease in operating revenue of \$5,675,448.57. Is that correct, as you recall it? Exhibit 99-A— A. Yes. Exhibit 99-A, in Docket 8230 shows the effect of rate reduction on revenue based on traffic volume in the last quarter of 1946, projected on an annual basis, of [2892] \$5,675,448.57.

Q. Now, during those years, I believe the testimony in the rate case also indicates, which we quoted a few moments

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ago, RCAC modernization program of some \$6,000,000, which was completed or partially completed, or substantially completed, during the years 1945, 1946, and 1947; is that correct? A. The equipment was installed in those years.

Q. Possibly I can rephrase it. Do you think that the Mackay competition was responsible for the rate reductions in 1945 and 1946? A. I do not know that the rate reductions in 1945 and 1946 could be ascribed wholly to the competition. However, I believe that some of the rate reductions were put into [2893] effect—

Q. Excuse me, Mr. Cearley. I do not want to interrupt. I am talking solely about Mackay competition with RCAC, through direct operation. Do you believe that that factor was responsible for the reductions in 1945 and 1946? A. I will have to go back to my previous attempt to answer it. I do not know that it could be fully ascribed to the competition from Mackay. However, Mackay did make some reductions, as I recall it, particularly on the rate to Europe. Now, what effect its operations on the direct circuits had in that respect, I do not know. So it is pretty difficult to pull out.

Q. You believe, then, that the new Mackay direct circuits may have partially been responsible for effecting those rate reductions? A. The profit effect of the direct circuits would show up in Mackay's operations.

Now, whether that was given much weight or not I do not know, but it all ties up in the same package.

Q. Do you believe that the new Mackay direct circuits were in any way responsible for the increase in your operating expenses? A. No, I would not say that that was true.

Q. And you do not attribute your plant program to Mackay's direct circuits, I assume? [2894] A. That is true.

Q. I would like to refer again to Exhibit 144.

Mr. Werner: Let me refer to the last question, Mr. Hartman.

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If Mackay were not in the picture at all, is it your position that you would have embarked on a \$6,500,000 modernization program?

The Witness: I think so.

By Mr. Hartman:

Q. In order to complete the picture on the subject we have just been discussing, Mr. Cearley, I would like you to refer to Exhibit No. 144 in the rate case, and this part of it is not in the present case, and indicate the dividend position of RCAC during the years we have just mentioned before; on page 4 of Exhibit No. 144, I think, Mr. Cearley, it shows the dividend record of RCA Communications. Will you indicate what that shows with respect to dividends?

A. Exhibit 144, page 4, reflects that no dividends were paid by RCA Communications in 1938.

Q. How about 1941? A. In 1941, there were dividends paid of \$2,250,000.

Q. How about 1943? A. I would like to make one comment on 1938. There was in 1938 a substantial amount carried in earned surplus. Actually there was \$2,994,472 in earned surplus from which [2895] dividends could have been declared.

Q. Now, as to 1943? A. In 1943, the dividends declared amounted to \$800,000.

Q. 1944? A. The dividends declared amounted to \$800,000.

Q. 1945? A. Dividends declared of \$800,000.

Q. What is the total record of dividend declarations by RCAC for the period shown in that exhibit? A. For the period of 1929 through 1946, there were \$12,000,000 of dividends declared.

Q. Now, are those dividends in addition to the 2½ per cent royalty which RCAC pays for RCA patents 2½ per cent of the gross? A. The amounts shown on Exhibit 144, page 4, are dividends declared on the common stock of

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RCA Communications. The 2½ per cent that you refer to is paid in the form of royalties for the use of patents.

Q. That is, royalties on the gross receipts of the communications activities of RCA Communications, Inc.; is that correct? A. On substantially all of the gross receipts from Communications Service.

[2898] By Mr. Werner:

Q. Mr. Cearley, will you turn to Exhibit 178? On the bottom of the page of that exhibit are the percentages of traffic moving by cable and by radio. Do you have any explanation for the fact that in the past ten years the ratios of traffic moving by cable and radio have practically reversed themselves? In other words, in 1936 cable handled 73 per cent of the traffic to and from Portugal, radio handled 27 per cent. In 1947, cable handled 34.7 per cent and radio 65.3 per cent. A. I don't know that I can explain just the reason for that change in the ratio.

Q. Does it indicate that radio may have some [2899] competitive advantage over cable? A. Of course, it would indicate that radio has been able to get more of the traffic for some reason.

Q. What do you think that reason is? Has it been a difference in rates charged by the cable companies as compared with the radio companies? A. No. There has been the same basic rates by radio and by cable.

Q. To what factors other than rates do you attribute the change in proportion of traffic handled? A. It would be just the preference of radio over cable.

Q. What factors have led to that preference as far as you know? A. I don't believe I can explain just why that situation has developed.

Q. Let me put it this way: do you think the change in the proportions of traffic handled are attributable to better service afforded by the radio carriers than the cable

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carriers, or do you think it is preference of the foreign administrations to route traffic over an inbound radio circuit as compared with cable circuit, because the foreign administration retains more of the tolls, or any other factor that you think of? A. Well, the foreign administration, of course, does have [2900] the privilege of routing traffic over radio—that is, the unrouted traffic particularly—over the radio circuit, and naturally they do retain more of the revenue of traffic that is routed over radio than they normally would on cable.

Q. Do you think the change in the proportions is attributable, to some extent at least, to the reason you have just given? A. I think so.

Q. Do you think any of the change in proportions is attributable to selling ability—salesmanship? A. That might be true on the outbound traffic from the United States. The greater volume would be produced of course by the selling force. I am not too familiar with the situation as it would exist in the foreign country, as to how extensive selling forces are employed in that country.

Q. Do you think, if the cable companies were to give the foreign administrations a division of tolls equal to that given by the radio companies, that the cable companies would get more traffic than they are now getting, or would not have lost the amount of traffic that they have lost in the past? A. It is reasonable to assume that that would have some effect. Just the extent, I don't know. That would be [2901] a matter to be determined by the foreign administration.

[2905] Q. With respect to your testimony regarding the effects of competition as between radiotelegraph circuits, is it your opinion that there would be no decline in the quality of service, assuming only one radiotelegraph circuit to any particular point in the world, or to put the question another way: do you think duplicate or split radiotelegraph circuits tend to improve the quality of service given by the

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companies? A. Not necessarily so. I think that a well managed company would render the best service possible under any conditions. I think that is only good business to do so.

Q. Is the incentive as great, when you have a single company serving a point, as compared to two companies serving the same point? A. The incentive is still there, because you have various other competitors for that traffic. If your service [2906] is permitted to deteriorate to a very low point of efficiency, naturally competition of airmail comes in.

By Mr. Wendt:

Q. How about the cables? A. Cable companies are there also.

By Mr. Werner:

Q. You have testified, Mr. Cearley, with respect to many disadvantages of competition as between radiotelegraph circuits. Do you have any opinion as to what advantages there might be, or there are, from competition as between radiotelegraph circuits? A. I would say whatever advantages might be ascribed to competition can be accomplished, I think, better by regulation. Good effective regulation can accomplish the same thing without the bad effects.

Q. But leaving out good and effective regulation for the time being, comparing advantages as against disadvantages, do you see any advantages to having more than one direct circuit to any particular point in the world? A. I do not.

Q. None whatsoever. A. I think that the ultimate cost to the user is greater due to the competition, and I see no benefit—

Q. Is that unique in the radiotelegraph industry? A. I think that is true of any public service setup.

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[2928] Mr. Hawkins: Mr. Cearley, will you refer to Exhibit 191-C and explain briefly how you prepared the exhibit.

The Witness: Exhibit 191-C was prepared on the same general basis as was 191 except that in determining the cost of operating the circuit we use a reduced number of paid words in our allocation.

[2929] Mr. Hawkins: Is it true that the column on the exhibit that is affected by the changes that you have referred to is column "F", entitled, "Cost of Operating Circuit"?

The Witness: That is true, and also column "G".

Mr. Hawkins: And column "G" is changed only because column "F" is changed?

The Witness: That is right.

Mr. Hawkins: Mr. Cearley, during your discussion of Exhibit 191, as I recall, you referred at pages 556 to 559 of the record to the landline tolls which would accrue to Western Union.

Do you have those pages of the record before you—556 to 559.

The Witness: Yes, I have them.

Mr. Hawkins: Now, referring to page 558, does it appear on that page that adjustment would be necessary because of the landline retention by Western Union—558 of the record?

The Witness: Yes, it does. It is shown on 558.

Mr. Hawkins: Would you state the total for the three circuits as indicated on that page? Is it \$18,659?

The Witness: \$18,659 was the result for the three circuits.

Mr. Hawkins: Would you reduce the figure of \$29,585 [2930] by that amount to arrive at the gain or loss from operation of the circuit?

The Witness: Yes.

Mr. Hawkins: Just to complete the testimony on the exhibit, would you give the number for each of

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the three countries as indicated in your testimony there at page 558?

The Witness: It was \$9,670 for the Portugal circuit and \$427 for the Surinam circuit. There seems to be some—

Mr. Hawkins: I think it is right above that.

The Witness: \$8,562 for The Netherlands.

Mr. Hawkins: If you considered those amounts as related to circuit operation you would reduce the gain on the circuit by each of those amounts.

The Witness: That is correct.

Mr. Hartman: May I ask one question there, Mr. Hawkins?

On what volume of the traffic was the \$18,659 computed.

Mr. Hawkins: I think that appears from the direct testimony of Mr. Cearley.

Mr. Hartman: Was the volume of traffic the volume presently handled or handled during the first six months of 1947 or was it the volume after the diversion to Mackay?

The Witness: That was based on traffic after the estimated diversion to Mackay.

Mr. Hartman: As I understood your testimony on page [2931] 558 you are talking about the traffic then existing for the first six months of 1947. That is the thing that confused me. At that time you were talking about the traffic before diversion and you make a deduction of \$18,000 now it appears that after diversion you still have the same deduction as the basis for estimating landline.

Mr. Hawkins: Mr. Hartman, if I could ask a couple of questions I think I could clear that up.

Mr. Hartman: Sure. I just wanted the point cleared.

Mr. Hawkins: Referring to Exhibit 191, Mr. Cearley and 191-C, it is true that the only difference

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between those two exhibits is the computation with respect to cost of operation of circuit.

The Witness: That is true.

Mr. Hawkins: In other words, you didn't do anything different with revenue in 191-C than you did with revenue in 191.

The Witness: That is correct. In 191-C we reallocated the expense.

By Mr. Werner:

Q. There was no reallocation of transmitter hours made at all. You used the same number of transmitter hours? A. That is correct.

Q. There was no assumption made that the transmitters would be on the air a fewer number of hours as a result of [2932] handling the smaller volumes of traffic? A. That is right.

Q. With reference to Exhibit 192, Mr. Cearley, wherein you have assumed that all the diversion of traffic to Mackay on the three circuits here at issue would come from RCAC's traffic. Why is it that no account was taken of the fact that at least some of this traffic would come from traffic which was formerly handled by Commercial Cable Company? A. I assumed that the competition had narrowed down to where it was effective as between radio and cable, and therefore that under normal circumstances the traffic would be taken away from radio by radio competition.

Now, to the extent, of course, that the AC&R group elected to transfer traffic from Commercial, that would be additional. However, I gave no consideration to what they might obtain from cable companies in my calculations on 192 and on 191.

Q. Going to the fundamental basis of the exhibit itself, it is reasonable to assume, is it not, all or the major part of traffic now handled by radio companies is traffic that would have been handled by the cable companies had there not been any radio companies in existence? A. Well, had

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there been no radio companies, naturally it would have been handled by cable.

[2933] Q. Why isn't it then an equally fair assumption to make, that if Mackay obtained a direct circuit, a substantial portion of the traffic which would flow on that circuit would be traffic taken away from either Commercial Cable or Western Union or both? A. Well, of course they may take some traffic from the cable systems, but in the study of 192 I find that in many many instances the percentage of traffic is higher than the average, so I think that the average percentage that I developed would represent, fairly closely, the traffic that RCA Communications would lose.

Now, to the extent that it took traffic from a cable company, naturally Mackay would operate with a greater volume of traffic than shown.

Q. Isn't it true, Mr. Cearley, that the rate of growth of the radiotelegraph companies has been in a higher proportion than the rate of growth of the cable companies? I am speaking of word volumewise. A. That is true.

Q. And isn't it a reasonable assumption to make that the reason that the radio companies have shown the rate of growth that they have is because they have diverted this traffic from the cables? A. Well, of course from the inception of the radio service there probably has been some traffic taken from the [2934] cables. Just to the extent I have no way of knowing.

Q. The testimony here has been, on the part of Mackay, that if its application for a circuit to Surinam is granted, all of the AC&R traffic destined to Surinam would go via Mackay. If that were so, and you made this computation, let us say, a year from now, and assuming the Commission were to grant the Surinam circuit, the figures in your exhibit 192 would indicate again that Mackay and RCAC have a certain proportion of traffic, when we know in advance that a major part of the traffic handled by Mackay would have been cable traffic had it not been handled by the

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radio? A. Naturally, if they diverted that traffic. However, as I understood, they contended that on other circuits they had not made that diversion. Whether or not they have taken traffic from cable companies and in what proportion, again I say I don't know.

Q. My recollection is that the witnesses for Mackay testified that where Mackay has a direct circuit to a point and the associated cable company does not have a direct cable circuit to that point, that all unrouted traffic coming into the AC&R system goes via the direct radio route? A. To that extent Mackay's load would be affected.

Q. Isn't it true also that the normal route for Commercial Cables traffic to China, Czechoslovakia, Egypt, [2935] and India—there may be others—is Mackay Radio? A. That is true.

Q. All that traffic would be shown in the figures appearing in Exhibit 192. To that extent could you say that that traffic was diverted from RCA? A. It is traffic that probably would have been given to RCA if Mackay was not operating to these points.

Q. Might it not have gone via Commercial Cable? A. Well, it could have gone. It could have been routed by an indirect route. Take China, for example: It could have been routed in direct route to China.

Q. If Mackay were not in existence, the AC&R system would have handled its traffic over its cable system? A. Well, yes, it could have handled it, for example, through London, over the cable system.

Q. That is, to some extent at least—we can't tell the extent because there is no way of measuring it—I believe you recognized that some of the traffic which Mackay now handles—or which Mackay began to handle after it obtained direct circuits to the points listed in Exhibit 192—was traffic which was diverted either from its sister cable companies or from Western Union? A. It is true that some of the load that has been referred to in 192 as being handled by

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Mackay was taken from the cable companies, but to what extent I have no way of [2936] determining.

Q. Have you made any studies to determine the connection with any particular country to which you had a direct circuit and to which Mackay was subsequently authorized a direct circuit, what diversion, if any, took place from RCA's traffic? A. I did look into that situation, but traffic load fluctuates so wildly at times it is difficult to determine just what effect it would have.

[2944] Q. Now, again going to Exhibit 192, a point has already been made of the fact that the percentages of traffic handled by each of the companies, namely, RCA and Mackay, are not the same as to all points. For example, Italy, on inbound traffic, is 82 per cent approximately for RCAC as compared to 17 per cent for Mackay? A. 82.6 per cent for RCA; 17.5 per cent for Mackay.

Q. That is correct.

Now, if you take a look at New Zealand, on inbound traffic RCA 25 per cent, Mackay 75 per cent? A. That is correct.

Q. Now, you jump to Japan where there is a fifty-fifty division on inbound traffic, which indicates that there is no [2945] uniformity from country to country, as to the amount of inbound traffic, and I realize that what you have done is averaged them all out. A. That is correct. I have estimated that the percentage would closely approximate the average of all the circuits, and that Mackay's participation in the load would be that average.

[2946] Q. It could very well be, could it not, Mr. Cearley, that in the event one or more of the circuits at issue here were granted to Mackay, that the percentage of traffic which Mackay would handle to the total radio telegraph traffic might be the percentage applicable to any one of the countries here? A. It might be more or might be

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something less, but I estimate that the relative load to these points would be according to the percentages and, taking into account the present load of Mackay, determines the amount of traffic that I estimate that they will take away from RCA Communications if granted the circuits.

[2950] By Mr. Werner:

Q. I wonder, Mr. Cearley, if it would be possible in connection with the questions and answers given regarding Exhibit 191, 191-B, and 191-C, and the comparability of one column as compared to the other column of those exhibits, whether you could submit an exhibit which would indicate comparability. A. Mr. Werner, I am sorry you didn't suggest that earlier. I think it would have been easier. Yes, I will be glad to submit an exhibit that will illustrate the answer to your question, and I might state briefly for the record that the loss of traffic indicated in 191-C will change the dollars slightly shown in column H of 191-B.

Q. Fine. That is precisely what I had in mind. A. And I will be glad to combine that with the 191-C to show that effect.

[2951] Q. As I understand it that exhibit will be prepared on the same allocation basis that these other exhibits have been prepared. You will use the same allocation theory that you have been using. A. That is correct.

Q. The form, rather. A. That is correct.

Mr. Hartman: Do I understand that it will be on precisely the same basis as 191-C or will it be on precisely the same basis as 191-B?

The Witness: It can't be on precisely the same basis and get a different dollars. Simply I will make a reallocation of costs assuming the loss of traffic on the three circuits as shown in 191-C.

Mr. Hartman: As shown in 191-C?

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The Witness: That is correct. When that allocation is made, naturally the figures as shown in column H of 191-B will be changed, but I will use the same basis.

Mr. Hartman: And the comments then which are applicable to 191-C in Mr. Werner's cross examination will apply to [2952] the new exhibit. Is that correct?

I mean by way of interpretation of the new exhibit since Mr. Cearley will not be available for cross examination at the time.

Mr. Hawkins: What was that?

Mr. Hartman: I just wanted to be sure of the basis on which 191-D should be analyzed. Is it directly comparable to column H in 191-B?

Mr. Werner: Yes. That is my understanding.

The Witness: Yes. And the same limitations would be applicable to it as stated for 191-C, in that it is a circuit statement and would not show the true effect on the company as a whole.

Mr. Hartman: On the company's over-all operations?

The Witness: That is right.

[2957] By Mr. Hartman:

Q. Mr. Cearley, with respect to 191-C, do I understand your testimony to be that the \$18,659 payout or retention by Western Union shown on page 558 of your direct testimony, that the figure of \$18,659 should be subtracted from the gain or loss shown in column G of 191-C? A: I think there was a slight misstatement regarding the \$18,659. The \$18,659, which represents the effect of the land line absorption of Western Union applies to the total number of words of traffic before any diversion is made to Mackay, and the amount that would be deducted from column G of 191-C would be \$11,993 instead of the \$18,659.

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[2971] Q. Again back to Exhibit No. 61, Mr. Cearley: During your cross examination Mr. Hartman referred to the operating income of RCA Communications in recent years, and he made particular reference to the period 1941 through 1946.

During that period, is it true that the earnings of all the carriers were inflated because of the high volumes of the war period? A. That is true.

Q. You would not consider that representative of what normal operations might be? A. No. It is not a representative period, due to the **[2972]** effect of the war.

Q. Mr. Hartman stopped in 1946. Would you make the same comparison that he made for the year 1947? You might refer, in that connection, to page 1 of Exhibit 62. Does that show in the middle of the exhibit the operating income for the year 1947? A. Yes.

Q. Will you state the amount? A. 11,700,000 dollars is the operating revenue shown.

Q. And the net operating revenue? A. The net operating revenue is a loss of \$29,000.

Q. Do you have before you, Mr. Cearley, Exhibit 191-B? A. Yes, I have Exhibit 191-B.

Q. Is it true that Exhibit 191-B shows that, without duplication, RCA would have a greater net operating revenue? A. That is true.

Q. Will you state how the additional revenue might affect the need for rate increases? A. The additional revenue would have a material effect, of course, on the net operating results of the company and thereby would affect, to a great extent, the need for additional revenue.

Q. And of course these 11 circuits are only a few of the circuits throughout the world? A. That is true.

[2973] Q. In view of your testimony in this exhibit, is it true that the Mackay duplication of facilities may be said to have caused, at least the necessity, for increases in rates? A. Well, I can say that, had the benefits from a single circuit operation been available there would not have

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been the need for increased revenue to the extent that it was.

Q. Is it your position that, with further duplication of facilities, with the already inadequate volume and revenue, necessarily further rate increases would be required to pay the cost?

Mr. Werner: Further rate increases by whom? Do you mean the general industry?

Mr. Hawkins: Yes.

The Witness: I can say that it would definitely contribute toward the additional need for revenue.

Mr. Werner: Would you mind explaining how you arrive at that conclusion?

The Witness: As I recall, RCA Communications, in the recent rate hearings, was in fairly good operating position, and naturally had it had available to it the traffic, its net operating position would have been better, and it would not have been necessary to give the amount of increase that was given.

[2974] Mr. Hartman: May I ask a question there?

Mr. Hawkins: Yes.

Mr. Hartman: Is it the substance of your statement, Mr. Cearley, that if RCAC had all of Mackay's traffic it would be in a better operating position?

The Witness: Yes, that can reasonably be expected.

Mr. Hartman: And had you all of the cable companies traffic you would be in still better position. would you not?

The Witness: With a greater volume of traffic, naturally we would expect to be in a better operating position.

Mr. Werner: The question that Mr. Hawkins asked you, as I recall, Mr. Cearley, was: If there

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were further duplication of circuits by Mackay, what effect would that have upon the necessity for further rate increases? Was that the sense of your question?

Mr. Hawkins: I think that is right.

The Witness: To the extent that traffic revenue was diluted or spread out to other carriers, naturally it would take away—it would be the reverse of what I have just explained in answer to that question.

Mr. Werner: Have you taken into consideration the result of further duplication on the carrier obtaining the duplicate circuit, of Mackay, or Tropical, or Globe, or whatever the carrier might be?

[2975] The Witness: Well, if you have two carriers operating, and one of them is operating at a certain level of earnings, and the other one is considerably below, to take away from the one having the higher earnings and give to the other, simply brings the two down somewhere below the peak of the two.

To that extent there is a certain leveling off that would have to be made up by further increases.

By Mr. Hawkins:

Q. Mr. Cearley, it is your position, with respect to playing off one American carrier against another, in split circuit operations, that the establishment of the split circuit weakens the bargaining power of the American carrier with the foreign correspondent? A. That is true.

[2980] Q. Now Mr. Hawkins brought into question the fact that [2981] you had an operating loss in 1947.

I believe your testimony shows that you had a net operating revenue of something in excess of 6 million dollars in 1945—6 and a half million dollars, roughly—whereas, in 1947, you show an operating loss.

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I believe we covered that very well this afternoon. To what do you attribute the change in your position over that two-year span? A. To a decrease in revenue and an increase in operating expenses.

Q. You also had a considerable plant expansion program over that period, did you not, from 1944 to 1947?

A. Yes. We had a considerable expenditure for plant in our modernization program.

Q. Do you know whether or not Mackay added any new circuits during that period which seriously disturbed your position during 1946 and 1947? A. I don't know offhand of any circuits that were established by Mackay during that year.

Mr. Hartman: I have nothing further, Mr. Commissioner.

[2982] Further, I would like to request incorporation by reference of an order of the Federal Trade Commission dated December 19, 1928 in Docket No. 1115. That is an order of the Federal Trade Commission dismissing a complaint of the Federal Trade Commission in the matter of General Electric Company *et al.* The complaint was a complaint which was filed by the Federal Trade Commission in January of 1924. Subsequent to issuance of the report of the Federal Trade Commission entitled "Radio Industry", the first seven pages of which were incorporated by reference on the first day of this hearing. The order which I am requesting to be incorporated by reference is as I have said an order dismissing the complaint of the Federal Trade Commission. I would like permission, if I may, to read the order which is very short. It is as follows:

"This matter coming on to be heard on the motions of [2983] the Respondents to dismiss the


*Harry Baach, for Western Union Telegraph Company—
Cross.*

complaint herein as amended and the Commission having heard oral argument in support of said motions and oral argument in opposition to said motions, and the Commission having considered briefs filed in support of and in opposition to said motions, and the Commission being fully advised in the premises, it is hereby ordered that the said motions be, and the same are hereby granted, and that the said complaint as amended be and the same is hereby dismissed. By the Commission. Otis B. Johnson, Secretary."

[2993] Mr. Margraf: Yesterday, on page 2478 of the record, Mr. Mitchell made a statement as to the date that printer operation from Portugal ceased in 1947. He has obtained further information on that, and has a message from his New York Office relating to that matter and I would like permission for Mr. Mitchell to read that message at this time. "

Mr. Mitchell: Message dated June 7, 1948 from S. M. Thomas, Vice President, RCA Communications, New York, addressed to myself. The text is:

"Printer operation with Lisbon at peak in September 1947 stop gradual decline noted in October and November when operations became very intermittent and finally ceased stop logs confirmed that printer contact was made on November 7, 8, and 10, with last entry noted on November 13 when contact on printer lasted one hour."

[3034] By Mr. Margraf: 

Q. Mr. Baach, will you refer to Exhibit 166, please?

A. Yes, sir.

Q. In the testimony of Mr. McPherson on behalf of Mackay it was indicated that the cable companies—and

*Harry Baach, for Western Union Telegraph Company—
Cross.*

especially Commercial Cable Company—was affected adversely because of certain decrees adopted in 1941 which became effective as counsel for Mackay has just said on January 1, 1942. Looking at the columns showing percentage of traffic handled by all cable carriers, and percentage of traffic handled by all radio carriers, and specifically the percentages for the year 1942 inbound to the United States, doesn't it appear to you from this exhibit that cables were under a great disadvantage during the first year that that decree was effective, namely, 1942? A. Cables?

Q. Yes. A. All cables?

Q. Yes. A. Western Union received 63.8 percent of the traffic.

Q. I was referring to the column "all cable carriers" about the middle of the page. A. Well, adding to that, 1.4 percent, which Commercial got, and some very small percentage that the French Cable Company got all cable carriers received in the year [3035] 1942, from Portugal, 65.3 percent.

Q. And all radio carriers 34.7 percent. A. 34.7 percent. That is what the figure is, yes.

Q. Now, isn't that slightly less than the figure for 1939 for all radio carriers, 35.2 percent? A. It is.

Q. Would that not indicate that whatever may have been the effects of the Portuguese decree, which was adopted in 1941 and made effective January 1, 1942, radio did not profit by that decreeing in 1942, the first full year of operation under that decree? A. That seems to be the case.

Q. To what do you attribute the rise in traffic for the year 1943 for all radio carriers? A. The deliverance of a lot of Western Union business to RCA.

Q. How did that come about? A. We lost our contract.

Q. The question which I wanted to ask is whether that came about by reason of the Portuguese decree which was passed in 1941 or whether it came about for some other reason? A. All I can say is if we had been able to renego-

Bertram Tower, for Intervenor—Direct.

tiate the contract that we had in 1942 in one form or another [3036] in 1943, we might have been able to present a better picture in 1943, but we lost our contract and the result is obvious.

Q. Now, is what you are saying, Mr. Baach, that insofar as the division of traffic between radio and cable is concerned, and competition between the two media, the diminution in the traffic handled by cable and the enhancement of the traffic handled by radio, occurred not because of the Portuguese decree adopted in 1941, which is a part of this record, but occurred because of other reasons? A. I don't know.

Q. Would you say that the activities of Commercial Cable Company with respect to the Western Union contract was the greatest contributing factor to the diminution in cable traffic as a whole? A. I believe so.

Q. Do you feel, Mr. Baach, that there is active and vigorous competition for traffic between the United States and The Netherlands on the one hand and between the United States and Portugal on the other hand, between Cable and Radio as to media? A. Between the United States and Portugal and between the United States and The Netherlands?

Q. Yes. [3037] A. Yes, I do.

• • • • •

[3085] BERTRAM TOWER, was called as a witness on behalf of Mackay Radio and Telegraph Company and, having been previously duly sworn, was examined and testified as follows:

• • • • •

[3086] By Mr. Hartman:

Q. Taking your Exhibit 207 marked for identification, Mr. Tower, will you amplify in any way you believe desirable the first line as to the estimated additional revenue reflected on page No. 1? A. Yes. I believe the footnote 1

Bertram Tower, for Intervenor—Direct.

explains the method upon which these figures were derived. I might say that, just to summarize, in the first place we used the statistics for the A. C. & R. System traffic in the last six months of 1947. We applied the new rates which were put into effect on April 28, 1948. The additional revenue to Mackay is based partly on a partial diversion of traffic now handled by our cable carriers and with respect to Portugal and Surinam the additional revenue is based also upon the actual experience of Mackay when the circuits were in operation in the latter part of 1947.

[3087] With respect to inbound traffic we have assumed with respect to The Netherlands and Portugal circuits a message for message return as compared with the traffic outbound from the United States. With respect to The Netherlands circuit we have not taken into consideration any increase in outbound traffic from the United States over that which was handled by the A. C. & R. companies in the latter part of 1947. And also in connection with Portugal and Surinam we have not taken into consideration any further increase in traffic to Mackay upon the circuit being in operation for a longer period than it was in the latter part of 1947.

Q. Turning to page 2 of the exhibit, will you indicate in general any factors which you think are not adequately [3088] explained by the footnotes as to the revenue figures? A. Well, with respect to the first line I think it might be well to refer to Note 8 on the last page. You can see that we took first of all the additional revenues to Mackay which we had estimated they would get.

Mr. Werner: Is this net or gross revenues?

The Witness: This is revenue before expenses. It is gross revenue after payouts, if that is what you mean.

Mr. Hawkins: Operating revenue?

The Witness: Operating revenue.

Bertram Tower, for Intervenor—Direct.

The deduction figures here represent—are the amount that the cable companies would get under the new rates, if they handled the traffic, which we are showing as being diverted to Mackay. As a matter of fact, if we don't get the circuits, some of the amounts that are shown here as reductions to revenues of Commercial and All America might very conceivably go over to RCA.

Mr. Werner: Are you referring to page 2 or page 5?

The Witness: I started with page 2 and referred to footnote 8.

By Mr. Hartman:

Q. So that your deduction figures on page 2 as illustrated by you in Note 8 reflect the same traffic which you have shown as an increment to Mackay under footnote 1, is that correct? That is, you have deducted from the cable [3089] companies revenue on the same traffic as that which has been given to Mackay by diversion from the cable company? A. Right, the revenue that would accrue to the cable company.

Q. Now as I understand it, Mr. Tower, you have made no allowance for any diversion of outbound traffic to any of these three points from any company outside the A. C. & R. System, is that correct? A. Well, except in so far as there might possibly have been a diversion of traffic on the Portugal and Surinam circuits—actual experience.

Q. That is based on actual experience? A. Yes, the last part of 1947.

Q. That is traffic which the A. C. & R. System actually handled during the latter part of 1947? A. That which we actually handled.

Q. If we were to apply a percentage basis as Mr. Cearley did in the case of RCA Exhibit 191 series, of course it would have been quite different, would it not? A. It would have been quite different, if we took all of the traffic which Mr. Cearley indicated we would take from RCA.

Bertram Tower, for Intervenor—Cross.

[3151] BERTRAM B. TOWER, resumed the stand, was examined and testified further as follows:

Cross examination (Resumed):

[3152] Q. Let's take Holland first: According to your computations [3153] here, Mackay would receive about \$40,000 additional revenue for service inbound from Holland? A. Yes, sir. Assuming that the only traffic that would be handled outbound from the United States would be the traffic which was handled by the AC&R system in the last six months of 1947, that is true.

Q. Would you expect that figure of approximately \$40,000 would come from the inbound radio volume from Holland? A. The figure of \$37,800 would come from the inbound—I am not sure where it would come from. It may be new traffic, it may come from RCA, it may come from Western Union.

Q. It would be the share of whatever volume the Holland PTT sent to the United States? A. Yes, it would be.

Q. And that volume of traffic sent to the United States by Holland PTT is now handled by RCA? A. Yes. Solely by RCA.

Q. Would you refer to page 3 of the exhibit? Under Netherlands on inbound traffic it appears that you have assumed that Mackay would receive one message inbound for every message sent to Holland, and that CCC would retain its present inbound volume. Could you give us any basis for that assumption, or is that just some assumption that you have made? [3154] A. In the first place I think the inbound volume from Holland is greater than the traffic to Holland by radio. In the second place our actual experience with respect to the Portugal circuit—

Q. Let's just take Holland first. A. I am explaining why I made this assumption. In the case of our actual experience on the Portuguese circuit we more than matched

Bertram Tower, for Intervenor—Cross.

the outbound volume, message for message. In other words, we received in excess of the messages which were sent to Holland, and I think it is only fair—

Mr. Werner: You mean to Portugal?

The Witness: To Portugal, yes, sir.

A. (Continuing) I think it is a very reasonable assumption that we should expect a message for message return from Holland.

Q. Then is it fair to say that your assumption is based on your experience on the Portugal circuit during the time the Portugal circuit was in operation? Is that the basis for your assumption? A. That is one of the bases, and I think it is more or less of an accepted principle that you get proportionate return for whatever you send to a foreign administration, and I think it is a conservative estimate in view of the fact that inbound radio traffic is in excess of the traffic [3155] outbound from the United States.

[3182] Q. Looking at Exhibit 117, would you read the paragraph marked No. 1? A. "The Commercial Cable Company undertakes to hand over to our Fayal station all the traffic from the United States of America destined to Portugal (Continent and Islands) except messages specifically ordered by the sender by another route."

Q. That provision would seem to require Commercial Cable to send all of its traffic over that route except as may be routed by another route? A. That is what it says.

[3183] Q. The same exhibit referred to provision 2 of the second agreement—the letter of August 28, 1942, which I think is the next letter.

Will you read provision 2 of that agreement? A. "The Eastern and Europe and Azores Companies undertake to

Bertram Tower, for Intervenor—Cross.

hand over to the Commercial Cable Company at Fayal a percentage of the total traffic from Portugal (Continent and Islands) to the United States of America and Mexico equal to the percentage which the total number of eastbound messages handed over in accordance with (1), by the Commercial Cable Company, is of the total eastbound traffic."

Q. That provision covers a proportionate return inbound from Portugal, does it not, for Commercial Cable? A. That is what it sounds like.

Q. Is it true that the number of messages that Commercial Cable sends outbound determines its participation in the total westbound volume? That is what that means, isn't it? A. I presume so. I don't know. I am not too familiar with this.

Q. In your computation shown on Notes 1 and 8 of [3184] this exhibit, have you considered that contractual provision? A. I don't know what you mean.

Q. If the Commercial Cable Company sends a reduced number of messages outbound, or to make it more clear, if the Commercial Cable Company did not send any messages outbound to Portugal over its existing route, it would not receive any messages inbound from Portugal? A. Are you asking me?

Q. Yes. A. I don't know. I am not too familiar with this.

Q. Isn't that what the agreement indicates? A. Well, it sounds like a contract with respect to proportionate arrangement but I am not too familiar with it.

[3203] By Mr. Werner:

Q. With respect to the use of two additional radio operators on the Netherlands circuit if it is operated directly, [3204] I am not sure if I am clear, from your testimony, how two additional operators would be sufficient to work that circuit 16 hours a day, 7 days a week. I believe you indicated that in addition to these two radio operators

Bertram Tower, for Intervenor—Cross.

there would be other operators who are now employed by Mackay who would, from time to time, operate those circuits, but you apparently show two radio operators full time for the operation of the direct Netherlands circuit. How would these two operators work 16 hours a day, 7 days a week? A. They wouldn't work 16 hours a day, 7 days a week. They would work a regular work week, and in the slower days and Saturday and Sunday the situation in our operating room is so flexible that the circuits can be covered in those slack periods without adding to our personnel. In other words, a man isn't sitting at a circuit his full time if the circuit is not busy—all of our circuits are not actually in full operation for eight hours of the day and there are slack periods when the operators can be switched around, and if he is not busy on one circuit he can go over on another circuit and work that circuit. It is a very flexible situation in the operating room that is handled to meet the traffic requirements at that particular time.

Q. Is it contemplated that these two operators would [3205] be working simultaneously or would there be one who would work one eight-hour shift and then another one working a second eight-hour shift? A. The latter is what is contemplated.

Q. So they would be manning both the receiving and operating positions at the same time—each operator would be manning a receiving and operating position at the same time? A. That is right.

Q. Is that usual in your operations in Mackay? Don't you have an operator who mans both the receiving and operating positions? A. Yes. Our superintendent informed me yesterday that we have several circuits that operate on the same basis.

Mr. Hawkins: You have several circuits that operated on—

The Witness: It is a one-man circuit.

Bertram Tower, for Intervenor—Cross.

Mr. Hawkins: You have several circuits, too, that are operated where you have one man in each position?

The Witness: I don't know that for a fact.

Mr. Hawkins: Tangier.

The Witness: It all depends on the traffic requirements.

By Mr. Werner:

Q. You indicated no radio operators would be necessary in the event you operated via Tangier. Is that because the present operators operating the Tangier circuit would just handle this traffic in addition to other traffic that now moves [3206] via Tangier? A. That is what I am told. That is my understanding.

Q. Are all the cost figures shown in the column headed "Via Tangier," costs which would be incurred at Tangier? Are all those costs those which would be incurred at Tangier? A. I would say so, yes, sir.

Q. In other words, no costs would be incurred at New York if you operated Netherlands via Tangier, is that correct? A. That is my understanding.

[3233] By Mr. Werner:

Q. Does that indicate with respect to the Netherlands, if you operated the circuit directly, that the AC&R system from the operation of the direct Netherlands circuit would benefit to the extent of \$1,563 a year? A. That is correct.

Mr. Hartman. And that, of course, is based on the volume of traffic which you reflect in Footnote No. 1?

The Witness: Yes, sir, it is. It does not take into consideration any increase which we might reasonably expect on outbound traffic from the United States.

Lon A. Cearley, for Appellant—Re-direct—Cross.

[3236] LON A. CEARLEY was recalled as a witness, was examined and testified further as follows:

[3237] *Re-direct examination by Mr. Hawkins:*

Q. Mr. Cearley, as indicated from the title of this exhibit, it includes information set forth in previous exhibits which I believe you have discussed in detail during your last cross examination. A. That is correct.

Q. Do you have any further comment to make on this exhibit? A. Well, Exhibit 191-D was prepared in answer to a question of Mr. Werner regarding the relationship of certain amounts shown in 191-C, and the exhibit was put into the record marked 191-B. This exhibit gives the relationship that would exist were the allocations made on the basis used in 191-C.

The amounts shown on 191-D are all the same as amounts shown in previous exhibits, with the exception of amounts in column (f) and column (h). All other figures, as I stated, are the same.

It will be observed that footnotes are attached and are to be considered a part of the exhibit which explain where the figures can be found in the other exhibits previously described.

[3238] *Cross examination by Mr. Hartman:*

[3242] Q. For the purpose of the exhibit, then, Mr. Cearley, you have assumed that if there were no Mackay direct debit, all of that traffic which includes all of Mackay's traffic volume, would have been handled by RCA? Is that correct? A. That is correct.

Lon A. Cearley, for Appellant—Cross.

[3246] Q. Going across to columns (h) and (i), with reference to Footnote No. 8, I am not quite sure that I understand the implications of Footnote 8.

As I understand it, you would further propose to deduct from column (h) additional landline tolls to Western Union. Is that correct, or have I misread the footnote? A. No. That explains Footnote 8:

The amounts in column (h) of this exhibit for the Netherlands, Portugal, and Surinam do not show the full effect on the RCA system from the grant of the MRT applications. The full effect from a grant of the MRT applications is shown by Exhibit 191, column (h) and the testimony on that Exhibit.

Exhibit No. 191 and the accompanying testimony show that after deduction of estimated landline tolls to Western Union, the operations for a six months period would show for the Netherlands a loss of \$15,397; for Portugal a loss of \$20,379, and for Surinam a loss of \$5,621, or a total **[3247]** loss of \$41,397 for the three circuits.

The landline toll has been deducted.

Q. Of course, the landline tolls have also been deducted from the figures to which you have subscribed, footnote 8, have they not? A. That is correct.

Q. So far as the Western Union landline deduction is concerned, they have subtracted both from the figures in column (h) of **[3248]** 191-D, and column H, in 191. Is that correct?

A. In Exhibit 191 the deductions for the Western Union landline toll was not included, but was included in the testimony pertaining to Exhibit 191. While in 191-D they have been deducted.

Lon A. Cearley, for Appellant—Cross.

By Mr. Hartman:

Q. In footnote 8, Exhibit 191-D, you show after deduction of landline tolls a loss of \$15,397 in the case of Holland.

How was that related to the \$20,326 for The Netherlands? A. I don't find that \$20,000 in that footnote.

Q. Column H, The Netherlands, you show a positive figure of \$20,326. Is that correct? I am talking about 191-D now. A. The amount shown in Exhibit 191-D of \$20,326 is the amount shown in column G of 191-C. And that is the column that Mr. Werner asked me to reconcile to figures in 191-B.

Q. Where do you find the 20,000— A. You will find in column G, The Netherlands, a figure of \$25,689. The testimony said that the deductions of the Western Union payouts was not included. Therefore, deducting the \$5,363, which was the estimated Western Union payouts, brings that figure to a profit of \$20,326.

[3249] Q. So that the \$20,326 is after the deduction of Western Union payouts? A. That is correct. Western Union payouts are deducted from all figures in 191-D.

Q. Now, let's go back to footnote 8 again, the third sentence. It says, "Exhibit 191, and the accompanying testimony shows that after the deduction of estimated landline tolls to Western Union, the operations for a six months' period would show for The Netherlands a loss of \$15,397."

What I am trying to do is compare that loss of \$15,397 after Western Union deductions to the gain of \$20,326 after Western Union deductions. A. If you will recall when Exhibit 191 was introduced, the question was raised by Commission counsel: What would be the effect if a redistribution of expenses were made, assuming the loss of traffic that we had assumed in 191?

In answer to that question, 191-C was then introduced, and I explained at that time that in my opinion 191-C did not show the system effect, but rather 191 showed the system effect, because if you allocated less expense to a given

Lon A. Cearley, for Appellant—Cross.

circuit, and assuming that your expenses remained the same, there would be a larger allocation to other circuits.

So the impact on company operations would not be clearly shown with the reduced allocation to these given [3250] circuits.

Q. The thing that puzzles me then is, are we saying in effect—and I don't want the record to misinterpret my views of what you said—but are we saying in effect that the change in traffic, up or down, doesn't affect your cost allocations? A. It does not affect the impact on the company as a whole, because of this reason: if you allocate less expense to one circuit you must necessarily allocate more expense to another circuit, so long as your total overall expenses remain the same.

Q. I would assume then that it is your conclusion that you cannot, through the allocation that you have here prepared, determine the effect on the company? A. Sir, I say you can determine. I have said that 191, Exhibit 191 does show the effect on the company. Likewise in 191-B and 191-D there are columns that do show the effect upon the company.

There are other columns that show the circuit effect in answer to Mr. Werner's question.

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VOLUME II
TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 567

**FEDERAL COMMUNICATIONS COMMISSION,
PETITIONER**

vs.

RCA COMMUNICATIONS, INCORPORATED

No. 568

**MACKAY RADIO AND TELEGRAPH COMPANY,
INCORPORATED, PETITIONER**

vs.

RCA COMMUNICATIONS, INCORPORATED

**ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT**

**PETITION FOR CERTIORARI FILED JANUARY 26, 1953
CERTIORARI GRANTED MARCH 9, 1953**

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Exhibit 5.**[3317]**

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Korea		218	48
Lebanon	34	77	49
Liberia	35		50
Madagascar		179	51

Exhibit 5.

Country	List A	List B	List C
	Item	Item	Item.
Malay States		70, 71, 87, 246	
Manchuria	36		
Martinique		31, 32	52
Mexico	37	192	53
Navy Point, Pacific		195	
Netherlands	38	7, 196, 217, 234	54
Neth. East Indies	39	47, 72, 88, 122, 214	47
Neth. West Indies	40	140	19
New Caledonia		121, 139, 176	55
New Hebrides		174	
New Zealand		73, 74, 159, 242	56
Nicaragua	41	143, 150, 151	57
Nigeria		133	
Northern Ireland		134	
Norway	42	1, 203, 217	58
Palestine		217, 243	59
Panama	43	93, 113, 137, 152	60
Paraguay		114	61
Peru	44	115	62
Philippines	45	41, 45, 53, 193, 194, 237	63
[3319]			
Poland	46	4, 215	64
Portugal	47	153, 232	65
Puerto Rico	48	155	66
Reunion Island		179	
Romania		202, 217	67
St. Pierre		26, 177	68
Salvador	49	116	69
Siam	50		
Sicily		184	
South Africa		75, 76, 236, 245	78
Spain	51	29, 166	71
Surinam	52	117, 233	72
Sweden	53	217	73
Switzerland	54	15, 16, 167, 230	74
Tahiti	55	61, 154, 175	75

Exhibit 6.

Country	List A	List B	List C
	Item	Item	Item
Tangier		216, 217	76
Trinidad		118, 141	
Tunisia		173	
Turkey	56	78, 79, 89, 217	77
Uruguay		6, 119	80
U. S. S. R.	57	36, 37, 44, 46, 52, 80, 217	81
Vatican City	58		82
Venezuela	59	227	83
Virgin Islands.			84
Yemen		228	
Yugoslavia		9, 181, 208	85

Exhibit 6.**[3320]**

20528-4/48

Docket No. 8777

Exhibit 6

LIST A

**Direct Radiotelegraph Circuits for Public Message
Correspondence Between the United States and
Foreign Countries and Overseas Points.**

Data with Respect to Authorizations in Effect, July 11, 1934.

EXPLANATION OF COLUMN HEADINGS

Column 1—Reference number.

Column 2—Foreign country or overseas point. No attempt has been made to list separately different terminal points in the foreign countries.

Exhibit 6.

Column 3—The American carrier¹ authorized as of July 11, 1934 to communicate with the country listed in Column 2.

Column 4—The date the circuit so authorized was opened. If more than one opening date for the circuit so authorized occurred this information is shown in brackets. Where the word "None" is shown between Columns 4 and 5, no circuit was ever established under this authorization.

Column 5—The date the circuit so authorized was closed. Where more than one closing date occurred, this information is shown in brackets. If the circuit so authorized has remained in operation continuously, this information is shown by a dash.

Column 6—The date this authorization was deleted from the company's license by this Commission. Where no such deletion occurred, this information is shown by a dash.

Column 7—Any general remarks relating to this authorization.

¹ List of Carrier Abbreviations.

GW—Globe Wireless, Ltd.

• Hearst—Hearst Radio Corporation

MRT—Mackay Radio Telegraph Co.

PW—Press Wireless, Inc.

RCAC—RCA Communications, Inc.

• SRC—Southern Radio Corporation

TRT—Tropical Radio Telegraph Company

USL—United States-Liberia Radio Corporation

• No longer in operation.

Exhibit 6.

LIST A

[3321]

**Direct Radiotelegraph Circuits for Public Message Correspondence
Between the United States and Foreign Countries
and Overseas Points.**

Data with Respect to Authorizations in Effect, July 11, 1934.

No. (1)	Country (2)	Company (3)	Circuit		Deleted (6)	Remarks (7)
			Opened (4)	Closed (5)		
1	Argentina	MRT	12-15-30	—	—	
		PW	None	—	7-12-39	
		RCAC	1-22-24	—	—	
2	Australia	RCAC	12-25-41	—	—	
3	Austria	MRT	4-22-31	12- 7-41	12- 1-42	
		PW	None	—	9-19-39	
		RCAC	None	—	9-19-39	
4	Bahamas	TRT	12- 1-22	—	—	
5	Belgium	PW	None	—	10-11-38	
		RCAC	10- 3-27	5-15-40	12- 1-42	
6	Bolivia	SRC	None	—	5-31-38	
7	Brazil	MRT	3- 2-36	—	—	
		PW	None	—	7-12-39	
		RCAC	5- 3-26	—	—	
8	Br. Honduras	TRT	1915	—	—	
9	Canada	PW	2- 1-32	—	12- 1-42	
		RCAC	3-10-28	—	—	
10	Chile	MRT	12-30-33	—	—	
		PW	None	—	7-12-39	
		RCAC	1-13-30	—	—	
11	China	GW	3- -30	12- 7-41	12- 1-42	Operations transferred to other points in China
		MRT	5-18-33	12- 7-41	12- 1-42	
		PW	3- 9-39	12- 7-41	2-19-42	
		RCAC	12- 6-30	1- 4-38	12- 1-42	
			5-13-38	1-27-40	—	
			5- 1-40	12-21-40	—	
12	Colombia	MRT	8- 1-31	—	—	
		RCAC	8-27-27	—	—	
		TRT	1912	7- 1-38	9-18-39	
		TRT	4-12-23	—	—	
13	Costa Rica	RCAC	9- 3-29	11-26-34	9-19-39	
		TRT	1908	—	—	
14	Cuba	MRT	4- 9-31	1- 2-48	—	
		PW	3- 1-33	—	—	
		RCAC	12- 4-28	—	—	
		TRT	10-13-27	—	—	
15	Czechoslovakia	Hearst	None	—	12-31-39	
		MRT	3-16-36	8-25-39	12- 1-42	
		RCAC	12- 1-30	8-25-39	12- 1-42	
16	Denmark	MRT	9-16-33	12-11-41	12- 1-42	
		RCAC	None	—	7-12-39	

Exhibit 6.

[3222]

No. (1)	Country (2)	Company (3)	Circuit		Deleted (6)	Remarks (7)
			Opened (4)	Closed (5)		
17	Dom. Republic	RCAC	12-24-30	—	—	
18	England	PW	4-2-42	—	—	
		RCAC	3-1-20	—	—	
19	Ethiopia	PW	None	—	9-26-39	
		RCAC	None	—	12-26-35	
20	Fiji	RCAC	5-1-29	6-15-41	12-1-42	
21	France	MRT	None	—	12-1-42	Operations transfer from Paris to other points after fall of France.
		PW	7-1-31	6-10-40	12-1-42	
		RCAC	12-14-20	6-13-40	12-1-42	
22	Fr. Indo China	RCAC	9-15-26	12-5-41	12-1-42	
23	Germany	MRT	None	—	12-1-42	
		PW	8-1-36	8-31-37	9-19-39	
		RCAC	8-1-20	12-11-41	12-1-42	
24	Guam	GW	11-25-30	3-15-41	12-1-42	
25	Guatemala	RCAC	1-22-34	—	—	
		TRT	5-14-24	—	—	
26	Haiti	MRT	3-6-36	—	—	
		RCAC	7-1-32	—	—	
27	Hawaii	GW	4-20-34	6-3-42	—	
		MRT	5-1-29	—	—	
		PW	Feb. 1931	Jan. 1939	5-9-41	
		RCAC	3-1-20	—	—	
28	Honduras	TRT	7-27-14	—	—	
29	Hongkong	PW	None	—	4-1-39	
30	Hungary	MRT	7-30-32	12-9-41	12-1-42	
31	Iran	RCAC	12-1-35	9-19-39	9-19-39	
32	Italy	PW	1-1-30	7-1-34	9-19-39	
		RCAC	{ 11-17-21 8-10-23 }	{ 3-1-22 12-11-41 }	{ 12-1-42 12-1-42 }	
33	Japan	MRT	11-14-34	12-12-41	12-1-42	
		PW	9-15-38	12-12-41	12-1-42	
		RCAC	9-16-28	12-12-41	12-1-42	
34	Lebanon	RCAC	{ 9-3-29 10-5-34 8-28-41 }	{ 5-1-30 7-9-41 — }	—	
35	Liberia	RCAC	{ 9-1-28 2-10-37 1-22-29 }	{ 5-1-30 — — }	—	
		USL	—	—	—	
36	Manchuria	PW	None	—	3-27-39	
		RCAC	{ 6-9-31 4-14-32 9-13-34 }	{ 9-19-31 9-12-34 12-14-41 }	{ 12-1-42 12-1-42 12-1-42 }	
37	Mexico	PW	7-1-31	—	—	
		RCAC	3-15-42	—	—	
		TRT	8-2-30	—	—	
		Hearst	None	—	12-31-39	

Exhibit 6.

[3323]

No. (1)	Country (2)	Company (3)	Circuit		Deleted (6)	Remarks (7)
			Opened (4)	Closed (5)		
38	Netherlands	PW	None		9-19-39	
		RCAC	8-15-25	5-15-40	12-1-42	
39	Neth. E. I.	PW	None		7-21-36	
		RCAC	7-16-25	3-13-42	12-1-42	
40	Neth. W. I.	RCAC	8-4-28	—	—	
41	Nicaragua	RCAC	None		9-19-39	
		TRT	1908	—	—	
42	Norway	RCAC	{ 5-17-20 3-13-41 }	{ 4-21-40 6-1-41 }	12-1-42	
43	Panama	RCAC	3-10-30	—	—	
		TRT	9-19-21	—	—	
44	Peru	MRT	12-11-29	—	—	
45	Philippine Is.	GW	4-16-34	12-31-41	12-1-42	
		MRT	12-2-30	12-31-41	12-1-42	
		PW	12-1-38	12-31-41	12-1-42	
		RCAC	6-27-27	12-31-41	12-1-42	
46	Poland	RCAC	10-5-23	9-9-39	12-1-42	
47	Portugal	RCAC	4-2-28	—	—	
48	Puerto Rico	RCAC	10-10-27	—	—	
		TRT	8-12-29	—	—	
49	Salvador	MRT	3-20-36	—	—	
		TRT	None		1-28-36	
50	Siam	RCAC	None		9-19-39	
51	Spain	MRT	12-18-33	2-1-34	12-1-42	
		PW	1-1-31	1-1-33	9-19-39	
		RCAC	8-1-29	—	—	
52	Surinam	RCAC	8-9-27	—	—	
53	Sweden	RCAC	12-1-23	—	—	
54	Switzerland	RCAC	5-11-32	—	—	
✓55	Tahiti	RCAC	9-1-44	10-7-46	—	
56	Turkey	RCAC	12-10-27	—	—	
57	USSR	PW	12-1-39	—	—	
		RCAC	11-13-30	—	—	
58	Vatican City	MRT	1-24-33	—	—	
		RCAC	None		9-19-39	
59	Venezuela	RCAC	{ 8-18-27 6-3-31 }	{ 7-16-28 — }	—	

Exhibit 7.

[3324]

Docket No. 8777

Exhibit 7

LIST B

**Direct Radiotelegraph Circuits for Public Message
Correspondence Between the United States and
Foreign Countries and Overseas Points.**

**Commission Actions on Applications from July 11, 1934
to April 1, 1948.**

Explanation of Column Headings.

Column 1—Reference Number.

Column 2—Control point in the United States (including territories and possessions).

NY—New York

BO—Boston

SF—San Francisco

NO—New Orleans

LA—Los Angeles

SJ—San Juan

HON—Honolulu

Column 3—Foreign or overseas terminal.

Column 4—The name of the applicant requesting the authorization.

Column 5—This column shows the name of the company which was authorized to operate a circuit from the United States to the particular foreign country at the time when the application in question was acted upon by the Commission. Where the word "None" is used, no other United States company was authorized to serve that particular country. Where more than one company is named in column 5, the

Exhibit 7.

companies are listed alphabetically and their order has no significance. Where "X" is used, it indicates that at the time its application was acted upon, the applicant was already authorized to communicate with the same or a different point in the same foreign country from the same or another point in the United States.

umn 6—The date a Special Temporary Authorization was granted or other action taken. If grant was in the form of a modification of license instead of an STA, it is indicated by a dash in this column and an appropriate entry in column 10. If application was denied, this is so shown in column 6.

umn 7—The date the circuit covered by this authorization was opened. If more than one opening date for the same circuit occurred, this information is shown in brackets. Where the word "None" is shown between columns 7 and 8, no circuit was ever established under this authorization. Where the word "Alternate" is shown, this circuit was used to supplement another circuit operated by the applicant from the United States to this or another point in the same foreign country. Where the word "Emergency" is used, this circuit is or was used during emergencies to supplement other facilities.

umn 8—The date when the circuit thus authorized was closed. When more than one closing date is involved in a given authorization, this information is shown in brackets. Where the cir-

Exhibit 7.

cuit has been in continuous operation to ~~date~~, this is indicated by a dash in this column.

Column 9—The date of termination of the STA. If there was no STA for this circuit, or if the regular station licenses were modified to include this point while the STA was outstanding as shown in column 10, this is indicated by a dash in column 9.

Column 10—The date on which the applicant's regular station license was modified to include this point of communication. If the word "~~None~~" is shown in this column, there was no such modification.

Column 11—The date on which this point of communication was deleted from the regular station license. Where there was no such deletion, this is shown by a dash. Where the word "None" appears in column 10, column 11 is not applicable.

LIST B

Direct Radiotelegraph Circuits for Public Message Correspondence Between the United States and Foreign Countries and Overseas Points.

Commission Actions on Applications from July 11, 1934 to April 1, 1948.

Item	From	Circuit To	Applicant	Other Authorizations Then in Existence	Special Temporary Authorization				Into Regular License	Deleted From License
					Granted	Opened	Closed	Expired		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1	NY	Oslo, Norway	MRT	RCAC	Denied after Hearing May 3, 1936. Commission decision upheld by U. S. Court of Appeals, 97 F (2nd) 641, (1938).					
2	NY	Reykjavik, Iceland	RCAC	None	2-12-36	1- 1-38 3- 4-41 5-17-42	5 14-40 4-25-41	—	12-30-37	—
3	NY	Rome, Italy	MRT	RCAC	Denied after Hearing Mar. 13, 1940.					
4	NY	Warsaw, Poland	MRT	RCAC	Dismissed after Hearing Feb. 29, 1940. Germans had occupied Warsaw.					
5	SF	Chengtu, China	RCAC	X	6-23-38	7-30-38	9-30-45	—	12- 1-42	—
			MRT	X	3-11-39	5-16-42	8-20-45	—	12- 1-42	10-15-45
6	NY	Montevideo, Uruguay	PW	None	3-28-39	4- 1-39	—	—	10- 9-41	—
7	NY	Amsterdam, Netherlands	PW	RCAC	9-19-39	None	—	8- 9-40	None	—

List B (Continued)

Item	From	Circuit To	Applicant	Other Authorizations Then in Existence	Special Temporary Authorization				Into Regular License	Deleted From License
					Granted	Opened	Closed	Expired		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
8	NY	Berlin, Germany	PW	RCAC	9-21-39	11- 9-39	12-19-41	2- 2-42	None	—
9	NY	Belgrade, Yugoslavia	RCAC	None	—	None	—	—	11-27-39	12- 1-42
10	NY	Cairo, Egypt	MRT	RCAC	1-20-42	5-16-42	—	—	12- 1-42	—
11	NY	Havana, Cuba	GW	MRT, PW, RCAC, TRT	Application for "Radiomail" type of service. Dismissed Feb. 16, 1940 at Globe's request.					
12	NY	Havana, Cuba	GW	MRT, PW, RCAC, TRT	—	10- 9-40	6- 3-42	—	5- 7-40	12- 1-44
13	NY	Juliannehaab, Greenland	MRT	None	4-19-40	4-19-40	5- 8-40	12- 1-42	None	—
14	NY	Quito, Ecuador	RCAC	None	Modification of License granted after Hearing.				4-29-40	12- 1-42
15	NY	Berne, Switzerland	PW	RCAC	5-16-40	—	—	—	12- 1-42	—
16	NY	Geneva, Switzerland	PW	RCAC	5-16-40	Alternate	—	—	12- 1-42	12- 1-44
17	NY	Godthaab, Greenland	RCAC	MRT	4-23-40	4-24-40	—	—	12- 1-42	—
18	NY	Juliannehaab, Greenland	RCAC	MRT	5-21-40	None	—	3- 1-43	None	—
19	NY	Rome, Italy	MRT	RCAC	6-12-40	6-14-40	12-11-41	12- 1-42	None	—
20	NY	Bordeaux, France	PW	X	6-15-40	6-19-40	—	9-15-40	None	—
21	NY	Tours, France	PW	X	6-15-40	6-10-40	6-17-40	9-15-40	None	—
22	NY	Bordeaux, France	RCAC	X	6-19-40	6-19-40	10-25-40	12-30-41	None	—
23	NY	Vichy, France	PW	X	7-15-40	—	—	—	12- 1-42	12- 1-44
24	NY	Vichy, France	RCAC	X	7-23-40	7-23-40	12- 4-42	—	12- 1-42	12- 1-44
25	NY	Foynes, Eire	MRT	None	7-26-40	7-29-40	—	—	12- 1-42	—
26	NY	St. Pierre	RCAC	None	8-10-40	8-20-40	—	—	12- 1-42	—
27	NY	Leopoldville, Bel. Congo	RCAC	None	9- 4-40	9- 9-40	—	—	12- 1-42	—

Exhibit 7.

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[3327]

List B (Continued)

Item	From	Circuit To	Applicant	Other Authorizations Then in Existence	Special Temporary Authorization				Into Regular License	Deleted From License
					Granted	Opened	Circuit Closed	Expired		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
28	NY	Paris, France	MRT	PW, RCAC	9-12-40		None	12-21-41	None	
29	NY	Barcelona, Spain	RCAC	X	9-21-40	10-19-40	—	—	12- 1-42	—
30	NY	Helsinki, Finland	RCAC	None	9-24-40	10-16-40	—	—	12- 1-42	—
31	NY	Fort de France, Martinique	RCAC	None	12- 4-40	Alternate	—	—	12- 1-42	—
32	SJ	Fort de France, Martinique	RCAC	None	12- 4-40	12- 9-40	—	—	12- 1-42	—
33	NY	Cairo, Egypt	RCAC	None	12-30-40	12-31-40	—	—	12- 1-42	—
34	NY	Brazzaville, Fr. Eq. Africa	RCAC	None	4-19-41	10-20-41	—	—	12- 1-42	—
35	SP&NY	Bogota, Colombia	GW	MRT, RCAC	—	9- 1-41	6- 3-42	—	7-29-41	12- 1-44
36	LA	Khabarovsk, U. S. S. R.	PW	X	10-14-41	Alternate	—	—	12- 1-42	—
37	NY	Tbilisi, U. S. S. R.	PW	X	10-17-41	None	—	2-17-42	None	—
38	NY	Santiago, Chile	PW	MRT, RCAC	10-21-41	None	—	12- 1-42	None	—
39	LA	Santiago, Chile	PW	MRT, RCAC	10-21-41	None	—	12- 1-42	None	—
40	NY	Honolulu, T. H.	MRT	X	12-12-41	Alternate	—	—	12- 1-42	—
41	NY	Manila, P. I.	MRT	X	12-12-41	Alternate	—	12- 1-42	None	—
42	NY	Chengtu, China	RCAC	X	12-13-41	Alternate	—	—	12- 1-42	—
43	NY	Honolulu, T. H.	RCAC	X	12-13-41	Alternate	—	—	12- 1-42	—
44	NY	Khabarovsk, U. S. S. R.	RCAC	X	12-13-41	Alternate	—	—	12- 1-42	—

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List B (Continued)

Item	From	Circuit To	Applicant	Other Authorizations Then in Existence	Special Temporary Authorization				Into Regular License	Deleted From License
					Granted	Opened	Circuit Closed	Expired		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
45	NY	Manila, P. I.	RCAC	X	12-13-41	Alternate	—	12- 1-42	None	—
46	NY	Moscow, U. S. S. R.	MRT	PW, RCAC	12-13-41	12-15-41	—	—	12- 1-42	—
47	NY	Batavia, NEI	RCAC	X	12-14-41	None	—	12- 1-42	None	—
48	SF	Chungking, China	RCAC	X	12-20-41	12-20-41	12- 4-46	—	12- 1-42	—
49	LA	Chungking, China	PW	X	12-21-41	12-21-41	5- 1-46	—	12- 1-42	—
50	SF	Chungking, China	MRT	X	12-31-41	5-16-42	5-21-46	—	12- 1-42	—
51	HON	Chungking, China	MRT	X	12-31-41	5-16-42	5-21-46	—	12- 1-42	—
52	SF	Khabarovsk, U. S. S. R.	RCAC	X	1- 2-42	Alternate	—	—	12- 1-42	—
53	SF	Cebu, Philippine Is.	RCAC	X	1- 9-42	1- 9-42	4-10-42	12- 1-42	None	—
54	NY	Melbourne & Sydney, Austr.	RCAC	X	1-16-42	Alternate	—	—	12- 1-42	—
55	NY	Hamilton, Bermuda	RCAC	None	1-20-42	8-10-42	—	—	12- 1-42	—
56	NY	Hamilton, Bermuda	MRT	None	1-20-42	8-10-42	—	—	12- 1-42	—
57	NY	Georgetown, Br. Guiana	RCAC	None	1-20-42	None	—	3- 1-43	None	—
58	SJ	Georgetown, Br. Guiana	RCAC	None	1-20-42	None	—	12- 1-42	None	—
59	SF	Rangoon, Burma	RCAC	None	1-20-42	None	—	4-20-42	None	—
60	SF	Rangoon, Burma	MRT	None	1-20-42	None	—	4-20-42	None	—
61	SF	Papeete, Tahiti	MRT	RCAC	1-20-42	None	—	12- 1-42	None	—
62	NY	Bathurst, Gambia	MRT	None	1-20-42	None	—	12- 1-42	None	—

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LIST B (Continued)

Item	From	Circuit To	Applicant	Other Authorizations Then in Existence	Special Temporary Authorization				Into Regular License	Deleted From License
					Granted	Opened	Closed	Expired		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
63	NY	Takoradi, Gold Coast	MRT	None	1-20-42	None		12-1-42	None	
64	NY	Bombay, India	RCAC	None	1-20-42	8-15-44	1-10-48	—	12-1-46	1-10-48
65	NY	Bombay, India	MRT	None	1-20-42	8-15-44	—	—	12-1-46	—
66	NY	Calcutta, India	MRT	None	1-20-42	None		12-1-42	None	
67	SF	Calcutta, India	RCAC	None	1-20-42	None		12-1-42	None	
68	NY	Teheran, Iran	RCAC	None	1-20-42	2-7-42	—	—	12-1-42	—
69	NY	Teheran, Iran	MRT	None	1-20-42	None		12-1-42	None	
70	SF	Singapore, Malay States	RCAC	None	1-20-42	None		4-20-42	None	
71	SF	Singapore, Malay States	MRT	None	1-20-42	None		4-20-42	None	
72	SF	Batavia, Nei	MRT	RCAC	1-20-42	None		4-20-42	None	
73	SF	Wellington, New Zealand	RCAC	None	1-20-42	2-23-42	—	—	12-1-42	—
74	SF	Wellington, New Zealand	MRT	None	1-20-42	3-14-42	1-1-48	—	12-1-42	1-10-42
75	NY	Capetown, South Africa	RCAC	None	1-20-42	None		5-28-47	None	
76	NY	Capetown, South Africa	MRT	None	1-20-42	None		7-1-43	None	
77	NY	Beyrouth, Lebanon	MRT	RCAC	1-20-42	None		12-1-42	None	
78	NY	Ankara, Turkey	MRT	RCAC	1-20-42	None		12-1-42	None	
79	NY	Istanbul, Turkey	MRT	RCAC	1-20-42	None		3-1-42	None	

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LIST B (Continued)

Item	From	Circuit To	Applicant	Other Authorizations Then in Existence	Special Temporary Authorization				Into Regular License	Deleted From License
					Granted	Opened	Closed	Expired		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
80	SF	Khabarovsk, U.S.S.R.	MRT	X	1-20-42	Alternate		—	12-1-42	—
81	LA	Melbourne, Australia	PW	RCAC	2-3-42	None		9-1-47	None	
82	LA	Port Darwin, Australia	PW	RCAC	2-3-42	None		5-3-42	None	
83	LA	Rangoon, Burma	PW	MRT, RCAC	2-3-42	None		5-3-42	None	
84	NY	Cairo, Egypt	PW	MRT, RCAC	2-3-42	None		12-1-42	None	
85	NY	Bombay, India	PW	MRT, RCAC	2-3-42	None		5-3-42	None	
86	NY	Teheran, Iran	PW	MRT, RCAC	2-3-42	None		5-3-42	None	
87	LA	Singapore, Malay States	PW	MRT, RCAC	2-3-42	None		5-3-42	None	
88	LA	Batavia, Nei	PW	MRT, RCAC	2-3-42	None		5-3-42	None	
89	NY	Ankara, Turkey	PW	MRT, RCAC	2-3-42	None		5-3-42	None	
90	NY	London, England	MRT	PW, RCAC	2-3-42	3-1-43	—	—	2-25-43	—
91	HON	Chengtu, China	MRT	X	2-6-42	2-6-42	8-20-45	—	12-1-42	8-20-45
92	NO	Havana, Cuba	RCAC	X	2-10-42	3-1-42	6-27-42	12-1-42	None	
93	SF	Panama City, Panama	RCAC	X	2-10-42	12-3-43	—	—	12-1-42	—
94	NY	Riyadh, Arabia	MRT	None	2-17-42	None		12-1-42	None	
95	SF	Buenos Aires, Argentina	RCAC	X	2-17-42	3-1-42	—	—	12-1-42	—
96	SF	Melbourne, Australia	MRT	PW, RCAC	2-17-42	4-12-42	1-1-48	—	12-1-42	1-10-48

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LIST B (Continued)

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Item	Circuit		Applicant	Other Authorizations Then in Existence	Special Temporary Authorization				Into Regular License	Deleted From License
	From	To			Granted	Opened	Closed	Expired		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
97	NY	Nassau, Bahamas	RCAC	TRT	2-17-42	None		12- 1-42	None	
98	NY	La Paz, Bolivia	MRT	None	2-17-42	2-25-42	—	—	12- 1-42	—
99	NY	Georgetown, Br. Guiana	MRT	RCAC	2-17-42	None		12- 1-42	None	
100	NY	Belize, Br. Honduras	RCAC	TRT	2-17-42	None		12- 1-42	None	
101	NY	Barbados, B.W.I.	RCAC	None	2-17-42	None		12- 1-42	None	
102	SF	Chengtu, China	GW	X	2-17-42	4-10-42	6- 3-42	—	12- 1-42	12- 1-44
103	SF	Bogota, Colombia	RCAC	X	2-17-42	3-23-42	10- 1-43	—	12- 1-42	10- 1-43
104	MIAMI	Bogota, Colombia	TRT	X	2-17-42	3- 1-42	—	—	12- 1-42	—
105	NY	Quito, Ecuador	MRT	RCAC	2-17-42	None		6- 1-43	None	
106	NY	Asmara, Eritrea	RCAC	None	2-17-42	None		12- 1-42	None	
107	NY	Bathurst, Gambia	RCAC	MRT	2-17-42	None		12- 1-42	None	
108	NY	Accra, Gold Coast	RCAC	MRT	2-17-42	None		12- 1-42	None	
109	NY	Reykjavik, Iceland	MRT	RCAC	2-17-42	None		12- 1-42	None	
110	NY	Baghdad, Iraq	RCAC	None	2-17-42	None		3- 1-43	None	
111	NY	Kingston, Jamaica	RCAC	None	2-17-42	None		12- 1-42	None	
112	NY	Nairobi, Kenya	MRT	None	2-17-42	None		12- 1-42	None	
113	HON	Panama City, Panama	MRT	RCAC, TRT	2-17-42	None		12- 1-42	None	

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LIST B (Continued)

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Item	Circuit		Applicant	Other Authorizations Then in Existence	Special Temporary Authorization				Into Regular License	Deleted From License
	From	To			Granted	Opened	Closed	Expired		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
114	NY	Asuncion, Paraguay	MRT	None	2-17-42	3-25-42	—	—	12- 1-42	—
115	NY	Lima, Peru	RCAC	MRT	2-17-42	None		3- 1-43	None	
116	NY	San Salvador, Salvador	RCAC	MRT	2-17-42	None		3- 1-43	None	
117	NY	Paramaribo, Surinam	MRT	RCAC	2-17-42	None		12- 1-42	None	
118	NY	Port of Spain, Trinidad	RCAC	None	2-17-42	None		3- 1-43	None	
119	NY	Montevideo, Uruguay	MRT	None	2-17-42	5-22-44	—	—	12- 1-46	—
120	SF	Guatemala City, Guatemala	RCAC	X	2-24-42	None		3- 1-43	None	
121	SF	Noumea, New Caledonia	RCAC	None	2-27-42	3- 9-42	—	—	12- 1-42	—
122	SF	Medan, Neth. East Indies	RCAC	X	3- 9-42	3- 9-42	3-13-42	3-19-42	None	
123	NY	Addis Ababa, Ethiopia	RCAC	None	3-10-42	None		3- 1-43	None	
124	NY	Aden, Aden	MRT	None	3-17-42	None		12- 1-42	None	
125	SF	Port Darwin, Australia	RCAC	X	3-17-42	None		12- 1-42	None	
126	SF	Port Darwin, Australia	MRT	X	3-17-42	None		12- 1-42	None	
127	NY	Nassau, Bahamas	MRT	RCAC, TRT	3-17-42	None		12- 1-42	None	
128	NY	Recife, Brazil	RCAC	X	3-17-42	4-20-42	9-11-42	3- 1-43	None	
129	NY	Barbados, B.W.I.	MRT	RCAC	3-17-42	None		12- 1-42	None	
130	SF	Suva, Fiji Islands	MRT	RCAC	3-17-42	None		12- 1-42	None	
131	NY	Cayenne, French Guiana	MRT	None	3-17-42	None		12- 1-42	None	

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LIST B (Continued)

Item	From	Circuit To	Applicant	Other Authorizations Then in Existence	Special Temporary Authorization				Into Regular License	Deleted From License
					Granted	Opened	Circuit Closed	Expired		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
132	NY	Kingston, Jamaica	MRT	RCAC	3-17-42	None		12- 1-42	None	
133	NY	Lagos, Nigeria	MRT	None	3-17-42	None		12- 1-42	None	
134	NY	Northern Ireland	MRT	None	3-17-42	None		12- 1-42	None	
135	NY	Recife, San Salv., Belem, Manaos, Natal, Brazil	MRT	X	3-24-42	None		3- 1-43	None	
136	SF	Chungking, China	GW	X	3-24-42	Alternate		7-24-42	None	
137	HON	Panama City, Panama	RCAC	X	3-24-42	None		11-24-42	None	
138	SF	Kunming, China	RCAC	X	3-25-42	3-26-42	1-16-46	—	12- 1-42	—
139	SF	Noumea, New Caledonia	MRT	RCAC	3-31-42	None		12- 1-42	None	
140	NY	Curacao, N.W.I.	MRT	RCAC	4- 7-42	None		12- 1-42	None	
141	NY	Port of Spain, Trinidad	MRT	RCAC	4- 7-42	None		12- 1-42	None	
142	BO	Nassau, Bahamas	TRT	X	4-15-42	Alternate		—	12- 1-42	—
143	BO	Managua, Nicaragua	TRT	X	4-15-42	Alternate		—	12- 1-42	—
144	NO	Nassau, Bahamas	TRT	X	4-28-42	Alternate		—	9-22-43	—
145	MIAMI	Belize, British Honduras	TRT	X	4-28-42	Alternate		—	9-22-43	—
146	MIAMI	Port Limon, Costa Rica	TRT	X	4-28-42	Alternate		—	9-22-43	—
147	NO	Port Barrios, Guat.	TRT	X	4-28-42	Alternate		—	9-22-43	—
148	MIAMI	Port Barrios, Guat.	TRT	X	4-28-42	Alternate		—	9-22-43	—

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LIST B (Continued)

Item	From	Circuit To	Applicant	Other Authorizations Then in Existence	Special Temporary Authorization				Into Regular License	Deleted From License
					Granted	Opened	Circuit Closed	Expired		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
149	MIAMI	Tegucigalpa, Honduras	TRT	X	4-28-42	Alternate		—	9-22-43	—
150	MIAMI	Bluefields, Nic.	TRT	X	4-28-42	Alternate		—	9-22-43	—
151	NO	Bluefields, Nic.	TRT	X	4-28-42	Alternate		—	9-22-43	—
152	MIAMI	Porto Arzuéles, Pan.	TRT	X	4-28-42	Alternate		—	9-22-43	—
153	NY	Lisbon, Portugal	MRT	RCAC	5- 5-42	None		6- 1-43	None	
154	SF	Papeete, Tahiti	RCAC	X	5- 6-42	6- 1-42	10- 7-46	—	12- 1-42	—
155	NY	San Juan, P.R.	MRT	RCAC	6-16-42	Emergency		—	4-14-43	—
156	NY	Melbourne, Australia	MRT	X	6-24-42	Alternate		—	12- 1-42	1-10-48
157	NY	Chengtu, China	MRT	X	6-24-42	Alternate		—	12- 1-42	10-15-45
158	NY	Chungking, China	MRT	X	6-24-42	Alternate		—	12- 1-42	—
159	NY	Wellington, N.Z.	MRT	X	6-24-42	Alternate		—	12- 1-42	1-10-48
160	NY	Bogota, Colombia	MRT	X	6-30-42	7- 2-42	10- 1-43	1- 1-44	None	Colombian Govt.
161	SF	Bogota, Colombia	MRT	X	6-30-42	None		12- 1-43	None	Colombian Govt.
162	NY	Kabul, Afghanistan	MRT	None	8- 3-42	5-26-43	9-17-43	—	12- 1-46	—
						4-17-44	—			
163	NY	Bogota, Colombia	RCAC	X	9- 1-42	None		2- 1-43	None	Colombian Govt.
164	SF	Bogota, Colombia	RCAC	X	9- 1-42	None		2- 1-43	None	Colombian Govt.
165	SF	Kunming, China	MRT	X	10-13-42	10-13-42	1-16-46	—	12- 1-42	—

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LIST B (Continued)

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Item	From	Circuit To	Applicant	Other Authorizations Then in Existence	Special Temporary Authorization				Into Regular License	Deleted From License
					Granted	Opened	Closed	Expired		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
166	NY	Madrid, Spain	MRT	RCAC	11-30-42	12-27-44	—	—	12- 1-46	—
167	NY	Berne, Switzerland	MRT	PW, RCAC	12-31-42	None	—	8- 1-43	None	—
168	NY	Rio de Janeiro, Brazil	PW	MRT, RCAC	1-16-43	11-13-43	—	—	12- 1-46	—
169	NY	Algiers, Algeria	MRT	None	2-19-43	3- 2-43	5- 5-46	12- 1-46	None	PTT in Algiers.
			PW	None	Denied Feb. 19, 1943. Action confirmed after Hearing, May 23, 1944.					
			RCAC	None	Denied Feb. 19, 1943. Action confirmed after Hearing, May 23, 1944.					
			MRT	None	7-27-43	8-13-43	5- 5-46	6- 1-46	None	MRT station in Algiers.
170	NY	Dakar, Fr. West Africa	RCAC	None	2-23-43	3-10-43	—	—	12- 1-46	—
			MRT	None	Denied Feb. 23, 1943.					
					Confirmed after Hearing, May 23, 1944.					
171	NY	Rabat, Fr. Morocco	RCAC	None	3-23-43	None	—	5-23-45	None	—
			MRT	None	Denied Mar. 23, 1943.					
					Confirmed after Hearing, May 23, 1944.					
172	NY	Accra, Gold Coast	MRT	None	4-20-43	5-28-43	6-30-46	12- 1-46	None	—
			RCAC	None	Denied April 20, 1943.					
173	NY	Tunis, Tunisia	RCAC	None	5-11-43	None	—	2-17-44	None	—
			PW	None	Denied July 27, 1943.					
174	SF	New Hebrides	MRT	None	Denied May 18, 1943.					
175	SF	Papeete, Tahiti	PW	RCAC	Denied June 29, 1943.					
176	SF	Noumea, New Caledonia	PW	RCAC	Denied June 29, 1943.					
177	NY	St. Pierre	PW	RCAC	Denied June 29, 1943.					
178	NY	Brazzaville, F. E. A.	PW	RCAC	Denied June 29, 1943.					

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LIST B (Continued)

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Item	From	Circuit To	Applicant	Other Authorizations Then in Existence	Special Temporary Authorization				Into Regular License	Deleted From License
					Granted	Opened	Closed	Expired		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
179	NY	Madagascar & Reunion.....	MRT PW RCAC	None None None	7- 6-43 Denied July 6, 1943. Denied July 6, 1943.	7-29-43	—	—	12- 1-46	—
180	NY	Santiago, Chile	PW	MRT, RCAC	Denied July 27, 1943, later reconsidered and granted. 12-21-43 9-23-44 — — 12- 1-46					—
181	NY	Yugoslavia	PW RCAC	None PW	8-13-43 Infrequent operations. 12-10-43 Infrequent operations. Press & govt. messages to the Yugoslav resistance movement.	4-23-45 6-10-45	—	—	None None	—
182	NY	Addis Ababa, Ethiopia.....	MRT RCAC	None None	9-28-43 5-17-45 8- 1-47 Denied Sept. 28, 1943.	—	—	—	12- 1-46	—
183	NY&SF	Bogota, Colombia	RCAC	X	9-29-43 10- 1-43	—	—	—	10- 1-43	Colombian Govt.
184	NY	Palermo, Sicily	PW	None	Denied Oct. 26, 1943.					
185	NY	Oran, Algeria	PW	None	Denied Oct. 26, 1943.					
186	NY	Bathurst, Gambia	RCAC MRT	None None	11-16-43 Denied Nov. 16, 1943.	1- 1-44	6-30-46	12- 1-46	None	
187	NY	Georgetown, Br. Guiana.....	MRT RCAC	None None	11-16-43 Denied Nov. 16, 1943.	1- 1-44	6-30-46	12- 1-46	None	
188	NY	Italian War Theatre.....	PW MRT RCAC MRT RCAC	None None None RCAC X	Denied Jan. 18, 1944. Denied Jan. 18, 1944. 1-18-44 2- 1-44 War Circuit (First Portable) Denied July 18, 1944. 6-27-44 6-10-44 War Circuit (Second Portable)					

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LIST B (Continued)

Item	From	Circuit To	Applicant	Other Authorizations Then in Existence	Special Temporary Authorization				Into Regular License	Deleted From License
					Granted	Opened	Circuit Closed	Expired		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
189	NY	Calais, Bordeaux; Brest, Cherbourg, Le Havre and Marseilles, France	PW	None	Denied Feb. 29, 1944.					
190	NY	European War Theatre	PW		6-12-44	6-12-44	War Circuit (First Portable)			
			MRT		8-4-44	8-4-44	War Circuit (First Portable)			
			PW		Denied Sept. 12, 1944.		Radio France, Paris.			
			MRT		Denied Sept. 12, 1944.		Radio France, Paris.			
			RCAC		9-12-44	9-16-44	Radio France, Paris.	12-1-46		
			PW		9-19-44	8-31-44	PW Station, Paris.	12-1-46		
			MRT		9-25-44	8-31-44	6-10-45	9-12-45	MRT Station, Paris.	
			RCAC		11-8-44	11-8-44	War Circuit (First Portable)			
			PW		1-2-45	1-2-45	War Circuit (Second Portable)			
			MRT		2-20-45	2-22-45	War Circuit (Second Portable)			
			MRT		4-17-45	6-10-45	PTT Paris—upon discontinuance of circuit to MRT, Paris.	12-1-46		
			RCAC		8-1-45	7-30-45	War Circuit (Second Portable)	2-26-48		Now Vienna
191		Honolulu, Hawaii	PW	MRT, RCAC	Application for Construction Permit at Honolulu. Set for Hearing June 27, 1944, but dismissed at PW request on July 11, 1944.					
192	NO	Merida, Mexico	TRT	X	9-12-44	3-1-45			12-1-46	

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LIST B (Continued)

Item	From	Circuit To	Applicant	Other Authorizations Then in Existence	Special Temporary Authorization				Into Regular License	Deleted From License
					Granted	Opened	Circuit Closed	Expired		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
193	SF	Philippine Islands	PW	None	11-14-44	11-14-44			12-1-46	
			RCAC	PW	5-8-45	6-17-45			12-1-46	
			MRT	PW, RCAC	11-14-45	8-1-46			12-1-46	
			GW	PW, MRT, RCAC	6-2-46	8-1-46			12-1-46	
194	HON	Manila, P. I.	RCAC	X	5-8-45	Alternate			12-1-46	12-1-47
195	SF	Navy Point, Pacific	PW	None	Denied Nov. 29, 1944.					
196	NY	Amsterdam, Neth.	RCAC	None	1-9-45	3-5-45			12-1-46	
			MRT	None	Denied Jan. 9, 1945.					
			PW	None	Denied Jan. 9, 1945.					
			PW	RCAC	4-17-46	4-30-46	1-1-47		12-1-46	
197	BO	Bogota, Colombia	TRT	X	12-5-44	1-15-45			12-1-46	
198	NY	Brussels, Belgium	RCAC	X	2-13-45	3-3-45			12-1-46	
			MRT		Denied Feb. 13, 1945.					
			PW		Denied Feb. 13, 1945.					
199	NY	Buenos Aires, Argentina	PW	MRT, RCAC	2-20-45	5-15-45			12-1-46	
200	SF	Rio de Janeiro, Brazil	RCAC	X	4-25-45	5-14-45			12-1-46	
201	NY	Copenhagen, Denmark	MRT	None	5-22-45	5-23-45			12-1-46	
			PW	None	5-22-45	None		12-1-47	None	
202	NY	Bucharest, Rumania	MRT	None	5-22-45	6-25-45	7-28-47		12-1-46	
			PW	None	5-22-45	None		8-22-45	None	
			RCAC	None	Denied May 22, 1945.					
203	NY	Oslo, Norway	RCAC	None	5-22-45	5-22-45			12-1-46	
			PW	None	5-22-45	None		8-22-45	None	
			MRT	None	Denied May 22, 1945.					

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LIST B (Continued)

Item	From	Circuit To	Applicant	Other Authorizations Then in Existence	Special Temporary Authorization				Into Regular License	Deleted From License
					Granted	Opened	Closed	Expired		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
204	NY	Prague, Czecho.	RCAC	None	6-26-45	7- 4-45	—	—	12- 1-46	—
			MRT	None	6-26-45	7- 5-45	—	—	12- 1-46	—
			PW	None	6-26-45	7-13-45	—	—	12- 1-46	—
205	NY	Sofia, Bulgaria	RCAC	None	8-14-45	8-20-45	—	—	12- 1-46	—
			MRT	RCAC	9-18-45	None	—	12- 1-47	None	—
			PW	RCAC	9-18-45	None	—	12- 1-47	None	—
206	SF	Tokio, Japan	RCAC	None	8-25-45	8-30-45	—	—	12- 1-46	—
			MRT	None	8-25-45	8-30-45	—	—	12- 1-46	—
			PW	None	8-25-45	9- 4-45	—	—	12- 1-46	—
207	NY	Ciudad Trujillo, D. R.	MRT	RCAC	9- 4-45	9-13-45	—	—	12- 1-46	—
208	NY	Belgrade, Yugoslavia	RCAC	None	9-18-45	5-20-46	—	—	12- 1-46	—
			MRT	None	9-18-45	None	—	—	None	—
209	NY	Budapest, Hungary	MRT	None	9-21-45	9-22-45	—	—	12- 1-46	—
210	SF	Shanghai, China	PW	X	9-10-45	9-12-45	—	—	12- 1-46	—
			RCAC	X	10-10-45	10-13-45	—	—	12- 1-46	—
			MRT	X	11- 9-45	12-15-45	—	—	12- 1-46	—
			GW	X	5- 2-46	10-31-46	—	—	12- 1-46	—
211	HON	Shanghai, China	RCAC	X	6-18-47	Emergency	—	—	2-27-48	—
212	NY	Rome, Italy	RCAC	X	9-28-45	10- 1-45	—	—	12- 1-46	—
			MRT	RCAC	11- 9-45	7-22-46	—	—	12- 1-46	—
			PW	MRT, RCAC	8-28-47	10-29-47	—	—	2-26-46	—

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Dominican Govt.

Ital. Cable.
Ital. Cable.
Radiostampa.

LIST B (Continued)

Item	From	Circuit To	Applicant	Other Authorizations Then in Existence	Special Temporary Authorization				Into Regular License	Deleted From License
					Granted	Opened	Closed	Expired		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
213	HON	Fiji Is.	RCAC	None	10-10-45	None	—	12-11-45	None	—
214	SF	Batavia, Java	RCAC	None	11-21-45	11- 1-46	—	—	12- 1-46	—
[3340]										
215	NY	Warsaw, Poland	RCAC	None	12- 5-45	1-19-46	—	—	12- 1-46	—
216	NY	Tangier	RCAC	None	12- 5-45	5- 5-46	—	—	12- 1-46	—
			MRT	None	12- 5-45	5- 6-46	—	—	12- 1-46	—
			PW	None	12- 5-45	None	—	9- 5-46	—	—
217	NY	Via Tangier								
		Moscow	MRT	X	12- 5-45	5- 6-46	—	—	12- 1-46	—
			RCAC	X	12- 5-45	5- 6-46	—	—	12- 1-46	—
		Kabul	MRT	X	8-22-46	9-30-46	—	—	12- 1-46	—
		Bombay	MRT	X	9-30-46	10-16-46	—	—	12- 1-46	—
			RCAC	X	9-30-46	10- 1-46	3-17-48	—	12- 1-46	—
		Sofia	MRT	X	—	2-17-47	—	—	1-30-47	—
		Istanbul	RCAC	X	—	7- 3-47	—	—	5-15-47	—
		Tehran	RCAC	X	—	1-30-48	—	—	5-15-47	—
		Oslo	RCAC	X	—	8-10-48	—	—	5-15-47	—
		Stockholm	RCAC	X	—	5-15-47	—	—	5-15-47	—
		Bucharest	MRT	X	—	7-23-47	—	—	6-20-47	—
		Addis Ababa	MRT	X	—	7-23-47	—	—	6-20-47	—
		Palestine	MRT	None	12- 5-47	None	—	—	1-10-48	—
		Netherlands	MRT	RCAC	Set for Hearing, Feb. 12, 1948.					—
218	SF	Seoul, Korea	RCAC	None	12-19-45	1-17-46	—	—	12- 1-46	—
219	NY	Montreal, Canada	PW	RCAC	1- 9-46	1- 9-46	3- 1-46	3- 1-46	—	—
					Special temporary authorization during Western Union strike—renewal denied Feb. 13, 1946.					—
220	NY	Vienna, Austria	MRT	None	1-30-46	2- 1-46	—	—	12- 1-46	—
			RCAC	MRT	3- 7-46	None	—	6- 7-46	None	—
					Radio Austria—upon discontinuance of circuit to RCAC, Vienna.					Radio Austria.
221	SJ	Ciudad Trujillo, D. R.	RCAC	X	5- 6-46	Emergency	—	—	12- 1-46	—
222	SJ	Havana, Cuba	RCAC	X	5- 6-46	Emergency	—	—	12- 1-46	—

Exhibit 7.

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[3341]

LIST B (Continued)

Item	From	Circuit To	Applicant	Other Authorizations Then in Existence	Special Temporary Authorization				Into Regular License	Deleted From License
					Granted	Opened	Closed	Expired		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
223	SJ	Haiti	RCAC	X	5- 6-46	Emergency		—	12- 1-46	—
224	SF	French Indo China	RCAC	None	5-10-46	10-25-46	—	—	12- 1-46	—
225	NY	Havana, Cuba	GW	MRT, PW, RCAC, TRT	8- 1-46	1- 8-47	—	—	5-29-47	—
226	SF	Nanking, China	MRT	X	6-14-47	11-19-47	—	—	12- 1-47	—
			PW	X	9-30-46	12- 2-46	—	—	12- 1-46	—
			RCAC	X	10- 3-46	10-12-46	—	—	12- 1-46	—
			MRT	X	10- 3-46	10-12-46	—	—	12- 1-46	—
			GW	X	Pending					
227	NY	Maracaibo, Venezuela	RCAC	X	11-14-46	Alternate		12- 1-47	None	
228	NY	Yemen	RCAC	None	11-29-46	None		—	None	
229	NY	Athens, Greece	RCAC	None	4- 1-47	7- 1-47	—	—	1-10-48	—
			MRT	None	Denied April 1, 1947.					
230	NY	Geneva, Switzerland	RCAC	X	—	5- 7-47	—	—	5- 6-47	—
231	NY	Helsinki, Finland	MRT	RCAC	10-13-47	None		2-12-48	None	
				Denied June 14, 1947. Granted Oct. 13, 1947 after oral argument. Revoked Feb. 12, 1948 and set for hearing. Application withdrawn by MRT.						
232	NY	Lisbon, Portugal	MRT	RCAC	10-13-47	10-20-47	2-12-48	2-12-48	None	
				Denied June 14, 1947. Granted Oct. 13, 1947 after oral argument. Revoked Feb. 12, 1948 and set for hearing.						
233	NY	Paramaribo, Surinam	MRT	RCAC	10-13-47	11-17-47	2-12-48	2-12-48	None	
				Denied June 14, 1947. Granted Oct. 13, 1947 after oral argument. Revoked Feb. 12, 1948 and set for hearing.						
[3342]										
234	NY	Netherlands	MRT	PW, RCAC	10-13-47	None		2-12-48	None	
				Denied June 14, 1947. Granted Oct. 13, 1947 after oral argument. Revoked Feb. 12, 1948 and set for hearing.						
235	NO	Rio De Janeiro, Brazil	MRT	X	Denied Jan. 10, 1948 after hearing. TRT license modified on the same date to include this point of communication from New Orleans.					
			TRT	MRT, RCAC	12-15-47	12-23-47	—	—	1-10-48	—
236	NY	South Africa	RCAC	None	12- 5-47	None		—	1-10-48	—
237	HON	Manila, P. I.	RCAC	X	1-16-48	Emergency		1-26-48	3-15-48	—

Exhibit 7.

Exhibit 7.

[3343]

Commission Action in Bermuda Circuits Case
Effective Jan. 10, 1948

No.	Country	Applicants	Action
(1)	(2)	(3)	(4)
238	Australia	RCAC MRT PW	Grant Deny Dismiss without prejudice.
239	Greece	RCAC MRT	Grant Deny
240	India	MRT RCAC	Grant Deny
241	Jamaica	TRT RCAC MRT	Grant Deny Deny
242	New Zealand	RCAC MRT	Grant Deny
243	Palestine	MRT RCAC	Grant Deny
244	Saudi Arabia	MRT RCAC	Grant Deny
245	South Africa	RCAC MRT US-L	Grant Deny Withdrawn
246	Ceylon, Hongkong and Malay States	RCAC MRT	Dismiss without prejudice. Dismiss without prejudice.

[3344]

Exhibit 8.

LIST C

Active and Inactive Direct International Radiotelegraph
Circuits as of April 1, 1948Federal Communications Commission
Engineering Department
Common Carrier DivisionLegend

AACR —All America Cables & Radio, Inc.
 GW —Globe Wireless, Ltd.
 MRT —Mackay Radio and Telegraph Company, Inc.
 PW —Press Wireless, Inc. Source of information—
 RCAC —RCA Communications, Inc. F. C. C. Records
 SPRS —South Porto Rico Sugar Company
 TRT —Tropical Radio Telegraph Company
 US-L —United States-Liberia Radio Corporation
 • —Circuit authorized but not active
 # —Circuit also listed under Puerto Rico or Hawaii

Circuit	Company	Foreign Terminal Operating Agency
Afghanistan (1)		
New York-Kabul	MRT	Government of Afghanistan
New York-Tangier-Kabul	MRT	" " "
Argentina (2)		
New York-Buenos Aires	PW	Board of Posts and Telecommunications, of Government of Argentina
" " " "	RCAC	Trans-Radio Internacional
" " " "	MRT	S. A. R. A. and C. I. D. R. A. ¹
San Francisco-Buenos Aires	RCAC	Trans-Radio Internacional
Australia (3)		
New York-Sydney	*RCAC	Amalgamated Wireless (A'Asia) Ltd.
San Francisco-Sydney	RCAC	" " " "
New York-Melbourne	*RCAC	" " " "
San Francisco-Melbourne	RCAC	" " " "

¹ Sociedad Anonima Radio Argentina; Compania Internacional de Radio (Arg.).

Exhibit 8.

Circuit	Company	Foreign Terminal Operating Agency
Austria (4)		
New York-Vienna	MRT	Radio Austria
" " "	RCAC	RCAC
Bahamas (5)		
Boston-Nassau	*TRT	Government of Bahama Islands
Miami-Bimini	*TRT	" " " "
" -Nassau	TRT	" " " "
New Orleans-Nassau	*TRT	" " " "
Bermuda (6)		
New York-Hamilton	RCAC	Cable & Wireless, W. I., Ltd.
" " "	MRT	" " " "
[3345]		
Belgium (7)		
New York-Brussels	RCAC	Administration of T. & T.
Belgian Congo (8)		
New York-Leopoldville	RCAC	Ministry of P. & T. Belgian Cong.
Bolivia (9)		
New York-La Paz	MRT	Comp. Int. Radio de Bolivia
Brazil (10)		
New York-Rio de Janeiro	RCAC	Comp. R'teleg. Braz. Soc. An.
" " " " "	MRT	Comp. Radio Int. de Brazil
" " " " "	PW	Teleradio Brasileira, Ltda.
San Francisco-Rio de Janeiro	RCAC	Comp. R'teleg. Braz. Soc. An.
New Orleans " "	TRT	" " " "
British Honduras (11)		
New Orleans-Belize	TRT	Government of British Honduras
Miami-Belize	*TRT	" " " "
Bulgaria (12)		
New York-Sofia	RCAC	Administration P.T.T.
New York-Tangier-Sofia	MRT	" " " "
Canada (13)		
New York-Montreal	RCAC	Canadian Marconi Company

Exhibit 8.

Circuit	Company	Foreign Terminal-Operating Agency
Chile (14)		
New York-Santiago	RCAC	Transradio Chilena
" " "	MRT	Compania, Internac. de Radio (Chile)
" " "	PW	Press Wireless Chilena, Ltda.
China (15)		
New York-Chungking	•MRT	Radio Adm. Chinese Nat. Govt.
" " Chengtu	•RCAC	" " " " "
San Francisco-Chengtu	•RCAC	" " " " "
" " "		
Chungking	•RCAC	" " " " "
San Francisco-Chungking	•MRT	" " " " "
#Honolulu-Chungking	•MRT	" " " " "
# " -Shanghai	•RCAC ¹	" " " " "
San Francisco-Kunming	•RCAC	" " " " "
" " "	•MRT	" " " " "
" " "		
Chungking	•PW	" " " " "
" " -Nanking-	MRT	" " " " "
" " "	RCAC	" " " " "
" " "	PW	" " " " "
" " -Shanghai	RCAC	" " " " "
" " "	MRT	" " " " "
" " "	PW	" " " " "
" " "	GW	" " " " "
Colombia (16)		
New York-Bogota	RCAC	Min. P. & T., Rep. of Colombia
" " "	MRT	AACR
San Francisco-Bogota	RCAC	Min. P. & T., Rep. of Colombia
Miami-Bogota	TRT	" " " " " " "
Boston "	TRT	" " " " " " "

¹ Emergency circuit only.

Exhibit 8.

Circuit	Company	Foreign Terminal Operating Agency
[3346]		
Costa Rica (17)		
Miami-Cartago	TRT	Cia. R. de Internac. de C. R.
Boston-Cartago	TRT	" " " " " " "
Miami-Port Limon	*TRT	" " " " " " "
Cuba (18)		
New York-Havana	GW	Cuban Wireless Corp.
" " "	RCAC	Cuba Transatlantic Radio Corp.
New Orleans-Havana	TRT	" " " " "
New York-Havana	PW	P. W. of Cuba, S. A.
Boston-Preston	TRT	United Fruit Company
Miami-Preston	*TRT	" " " " "
New York-Camaguey	*MRT	Radio Corporation of Cuba
New York-Havana	MRT	" " " " "
#San Juan-Havana	*RCAC ¹	Cuba Transatlantic Radio Corp.
Curacao, N. W. I. (19)		
New York-Curacao	RCAC	Government of Curacao
#Ensenada	SPRS	" " " "
Czechoslovakia (20)		
New York-Prague	MRT	Adm. of Posts and Telegraphs
" " "	PW	" " " " "
" " "	RCAC	" " " " "
Denmark (21)		
New York-Copenhagen	MRT	General direktoratet for Post-Ag Telegrafvaesent
Dominican Republic (22)		
New York-C. Trujillo	RCAC	RCAC
" " " "	MRT	Dept. of State Comm. & Public Works
#Ensenada	SPRS	Government of Dominican Republic
# " La Romana	SPRS	Central Romana Corporation
#San Juan-C. Trujillo	*RCAC ¹	RCAC
Ecuador (23)		
New York-Quito	RCAC	Min. of Comm. Government of Ecuador

¹ Emergency circuit only.

Exhibit 8.

Circuit	Company	Foreign Terminal Operating Agency
Egypt (24)		
New York-Cairo	RCAC	Marconi R. T. Co., Egypt, S. A.
" " "	MRT	" " " " " "
Ethiopia (25)		
New York-Addis Ababa	MRT	Government of Ethiopia
New York-Tangier- Addis Ababa	MRT	" " "
[3347]		
Finland (26)		
New York-Helsingfors	RCAC	Dept. of P. & T., Govt. of Finland
France (27)		
New York-Paris	RCAC	Radio France
" " "	PW	PW
" " "	MRT	French Adm. P. T. T.
French Equatorial Africa (28)		
New York-Brazzaville	RCAC	Government of Free French Africa
French Indo-China (29)		
San Francisco-Saigon	RCAC	Compagnie Generale de Telegraph San Fils
French West Africa (30)		
New York-Dakar	RCAC	French P. T. T.
Germany (31)		
New York-Berlin	*MRT	MRT
" " "	*RCAC	RCAC
" " "	PW	PW
" " Frankfurt	PW	PW
" " "	MRT	Deutsche Post
" " "	RCAC	" "
Greece (32)		
New York-Athens	RCAC	Cable and Wireless, Ltd.
Greenland (33)		
New York-Godthaab	RCAC	Government of Greenland
Guadeloupe (34)		
Ensenada-Destrehan	SPRS	Government of Guadeloupe

Exhibit 8.

Circuit	Company	Foreign Terminal Operating Agency
Guatemala (35)		
New York-Guatemala City	RCAC	TRT
Boston-Guatemala City	TRT	"
New Orleans " "	TRT	"
Miami-Puerto Barrios	*TRT	"
New Orleans-Puerto Barrios	*TRT	"
Haiti (36)		
New York-Port-au-Prince	RCAC	RCAC
New York-Port-au-Prince	MRT	Republic of Haiti
*San Juan-Port-au-Prince	*RCAC ¹	RCAC
Hawaii (37)		
New York-Honolulu	RCAC	RCAC
" " "	GW	GW
" " "	MRT	MRT
San Francisco-Honolulu	RCAC	RCAC
" " "	MRT	MRT
" " "	GW	GW
Honolulu-Papeete, Tahiti	*RCAC	French Adm. P. T. & T.
Honolulu-Shanghai, China	*RCAC ¹	Radio Adm. Chinese Nat. Govt.
Honolulu-Chungking, China	*MRT	Radio Adm. Chinese Nat. Govt.
Honolulu-Manila, P. I.	*RCAC ¹	RCAC
[3348]		
Honduras (38)		
Boston-La Lima	TRT	TRT
New Orleans-La Lima	TRT	"
Miami-Tegucigalpa	TRT	"
New Orleans-Tela	TRT	"

¹ Emergency circuit only.

Exhibit 8.

Circuit	Company	Foreign Terminal Operating Agency
Hungary (39).		
New York-Budapest	MRT	Administration of P. & T.
Iceland (40).		
New York-Reykjavik	RCAC	P. & T. Administration of Iceland
India (41)		
New York-Tangier-Bombay	*RCAC	Indian Radio & Cable Comm. Co.
New York-Tangier-Bombay	MRT	Govt. India Overseas Comm. Service
New York-Bombay	MRT	" " " " "
Iran (42)		
New York-Teheran	RCAC	Ministry of P. T. & T.
New York-Tangier-Teheran	*RCAC	" " " " "
Ireland (43)		
New York-Foynes	MRT	Eire Posts and Telegraphs
Italy (44)		
New York-Rome	RCAC	Italcable
" " "	MRT	"
" " "	PW	Radio Stampa
Jamaica (45)		
Miami-Kingston	TRT	Gov't. of Jamaica
Japan (46)		
San Francisco-Tokyo	RCAC	Supreme Commander for the Allied Power
" " "	MRT	Supreme Commander for the Allied Power
" " "	PW	Supreme Commander for the Allied Power
Java, N.E.I. (47)		
San Francisco-Batavia	RCAC	Telegraph Administration, Govt. of Netherlands East Indies
Korea (48)		
San Francisco-Seoul	RCAC	Korean Military Govt.
Lebanon (49)		
New York-Beyrouth	*RCAC	Compagnie Radio-Orient

Exhibit 8.

Circuit	Company	Foreign Terminal Operating Agency
Liberia (50)		
New York-Monrovia	RCAC	Government of Liberia
Akron-Harbel	US-L	United States-Liberia Radio Corp.
Madagascar (51)		
New York-Tananarive	MRT	Government of Madagascar
Martinique (52)		
New York-Fort de France	*RCAC	French Colonial Administration
#San Juan-Fort de France	RCAC	" " "
Mexico (53)		
New York-Mexico City	RCAC	Government of Mexico
" " " "	PW	" " "
New Orleans-Mexico City	TRT	" " "
New Orleans-Merida	TRT	" " "
[3349]		
Netherlands (54)		
New York-Amsterdam	RCAC	Administration of P. T. & T.
" " "	*PW	" " " " "
New Caledonia (55)		
San Francisco-Noumea	RCAC	Director General P. & T.
New Zealand (56)		
San Francisco-Wellington	RCAC	New Zealand P. & T. Dept.
Nicaragua (57)		
New Orleans-Managua	TRT	TRT
Boston-Managua	TRT	"
Miami-Bluefields	*TRT	"
New Orleans-Bluefields	*TRT	"
Norway (58)		
New York-Oslo	RCAC	Government of Norway
" " -Tangier-Oslo	*RCAC	" " "
Palestine (59)		
New York-Jerusalem	*MRT	Cable & Wireless, Ltd.

Exhibit 8.

Circuit	Company	Foreign Terminal Operating Agency
Panama (60)		
New York-Panama City	RCAC	TRT
San Francisco-Panama City	RCAC	"
Miami-Panama City	TRT	"
Boston-Panama City	TRT	"
New Orleans-Panama City	*TRT	"
Miami-Puerto Armuelles	*TRT	Chiriqui Land Company
Paraguay (61)		
New York-Asuncion	MRT ¹	Government of Paraguay
Peru (62)		
New York-Lima	MRT	AACR
Philippines (63)		
San Francisco-Manila	PW	PW
" " "	RCAC	RCAC
" " "	MRT	MRT
" " "	GW	GW
Honolulu-Manila	*RCAC ²	RCAC
Poland (64)		
New York-Warsaw	RCAC	Ministry of P. & T.
Portugal (65)		
New York-Lisbon	RCAC	Comp. Portuguesa Radio Martoni
Puerto Rico (66)		
New York-San Juan	RCAC	RCAC
" " " "	*MRT ³	AACR
New Orleans-San Juan	TRT	RCAC
San Juan-Fort de France	RCAC	French Colonial Administration
San Juan-Havana	*RCAC ²	Cuba Transatlantic Radio Corp.
Ciudad Trujillo, D. R.	*RCAC ²	RCAC
Port-au-Prince, Haiti	*RCAC ²	"
St. Thomas, V. I.	AACR	AACR

¹ Closed to commercial traffic since Nov. 1946 due to civil war in Paraguay.

² Emergency circuit only.

³ Emergency circuit only—to be operated when All America Cables & Radio, Inc., cables to Puerto Rico and Virgin Islands are interrupted.

Exhibit 8.

Circuit	Company	Foreign Terminal Operating Agency
[3350]		
Ensenada—		
Ciudad Trujillo, D. R.	SPRS	Government of Dominican Republic
Curacao, NWI	SPRS	Government of Curacao
Destrellan, Guadeloupe	SPRS	Government of Guadeloupe
LaGuayra, Venezuela	SPRS	Government of Venezuela
La Romana, Dom. Rep.	SPRS	Central Romana Corporation
Romania (67)		
New York-Bucharest	MRT	Adm. of Posts and Telegraphs, Romania
New York-Tangier- Bucharest	MRT	Adm. of Posts and Telegraphs, Romania
St. Pierre et Miquelon (68)		
New York-St. Pierre	RCAC	French Colonial Administration
Salvador (69)		
New York-San Salvador	MRT	Government of Republic, El Salvador
Saudi Arabia (70)		
New York-Saudi Arabia	*MRT	(Appropriate agency)
Spain (71)		
New York-Barcelona	RCAC	Transradio Espanole, S.A.
" " Madrid	RCAC	" " "
" " "	MRT	Sociedad Anonima Radio Argentina
Surinam (72)		
New York-Paramaribo	RCAC	Government of Surinam
Sweden (73)		
New York-Stockholm	RCAC	Royal Telegraph Adm., Sweden
" " Tangier- Stockholm	RCAC	" " " "
Switzerland (74)		
New York-Berne	RCAC	Radio Suisse
" " "	PW	" " "
" " Geneva	RCAC	" " "
Tahiti (75)		
San Francisco-Papeete	RCAC	French Adm. P. T. & T.
Honolulu-Papeete	*RCAC	" " " " " "
Tangier (76)		
New York-Internat. Zone	MRT	MRT
" " " "	RCAC	RCAC

Exhibit 8.

Circuit	Company	Foreign Terminal Operating Agency
Turkey (77)		
New York-Istanbul	RCAC	Government of Turkey
New York-Tangier-Istanbul	*RCAC	" " "
Union of South Africa (78)		
New York-Capetown	*RCAC	(Appropriate agency)
United Kingdom (79)		
New York-London	RCAC	Cable & Wireless, Ltd.
" " "	MRT	" " " "
" " "	PW	" " " "
Uruguay (80)		
New York-Montevideo	PW	P.W. Uruguay, Ltda.
" " "	MRT	Dirección General del Servicio de Transmisiones
[3351]		
U. S. S. R. (81)		
New York-Moscow	RCAC	Government of the U. S. S. R.
" " "	MRT	Min. of Postal & Electrical Comm. (Minsviaz)
" " "	PW	Government of the U. S. S. R.
New York-Tangier-Moscow	RCAC	" " " " " "
New York-Tangier-Moscow	MRT	Min. of Postal & Electrical Comm. (Minsviaz)
New York-Khabarovsk	*RCAC	Government of the U. S. S. R.
San Francisco-Khabarovsk	*RCAC	" " " " " "
San Francisco-Khabarovsk	*MRT	" " " " " "
San Francisco-Khabarovsk	*PW	" " " " " "
Vatican City (82)		
New York-Vatican City	MRT	Estate de la Citta del Vaticano
Venezuela (83)		
New York-Caracas	RCAC	Government of Venezuela
#Ensenada-LaGuayra	SPRS	" " "
Virgin Islands (84)		
#San Juan-St. Thomas	AACR	AACB
Yugoslavia (85)		
New York-Belgrade	*MRT	Administration of P. T. & T.
" " "	RCAC	" " " "

Exhibit 79

[3559]

(Second Page)

Excerpt from Minutes of the
Federal Communications Commission

Minute #67-43

February 16, 1943

10:30 A. M.

PRESENT: Commissioners Fly, Chairman; Walker, Case,
Craven, Wakefield and Durr.

* * *

TELEPHONE MATTERS

* * *

TELEGRAPH MATTERS

* * *

MISCELLANEOUS

The Commission, upon consideration of its action of November 17, 1942 in designating for hearing the applications of RCA Communications, Inc., for renewal of licenses, Dockets Nos. 6459 to 6467, inclusive, and upon consideration of the waiver by RCA Communications, Inc., of all restrictive provisions in its foreign traffic contracts, *approved* said waiver and *directed* the Company to send it to all foreign correspondents with whom it has restrictive contracts. The Commission *directed further* that all other international radiotelegraph carriers licensed by this Commission be directed to send a similar waiver to their foreign correspondents with whom they have restrictive contracts. In this connection the Commission approved the following condition for inclusion in the licenses of RCA Communications, Inc., and directed that a similar waiver be incorporated in the licenses of other international radiotelegraph carriers licensed by the Commission:

Exhibit 79.

"This license is granted upon condition that the licensee shall not operate under or enter into any contract, arrangement or understanding with any foreign carrier or administration, which might prevent or hamper the establishment or unrestricted operation by such foreign carrier or administration of circuits with any other United States carrier, or the transmission of unrouted traffic of all classes over such circuits operated with any other United States carrier."

The Commission also approved the policy of requiring that steps be taken looking to similar action in the case of international cabletelegraph carriers.

* * *

T. J. SLOWIE
Secretary

MICRO
TRADE

CARD
MARK 

3.343



53

Exhibit 80.

[3561]

R. C. A. COMMUNICATIONS, INC.66 BROAD STREET
NEW YORK 4, N. Y.T. H. MITCHELL
Vice President and General Manager

March 5, 1945

The Director General of
The Administration of Posts and Telegraphs,
Eindhoven,
The Netherlands.

Dear Sir:

We are sending you the enclosed letter relative to the provisions of our mutual traffic agreement concerning the transmission of unrouted traffic to comply with a requirement of our Federal Communications Commission which was adopted early in the year 1943 and which, of course, could not be communicated to you at that time because of the then prevailing conditions. However, all American companies engaged in international radio communication were required to send a letter such as the one enclosed, to all of their foreign correspondents with whom there were in effect traffic agreements which might be deemed to be in conflict with the new requirement incorporated in their new communication licenses, and we are therefore taking the earliest opportunity of complying with our Federal Communication Commission's requirement.

With very best wishes to you, I am

Very sincerely,

(Sgd). T. H. MITCHELL

Enclosure

Exhibit 85.

COPY

[3574] MACKAY RADIO AND TELEGRAPH COMPANY, INC.

August 22, 1947

Mr. A. Vaz Pinto
Chairman and Managing Director
Companhia Portuguese Radio Marconi
Lisbon, Portugal

My dear Mr. Vaz Pinto:

I am sure that you know, from your visits to our stations, that we are engaged in an extensive program of expansion and modernization of facilities. In that development we have reached the stage at which we need and desire the views of our correspondents in determining the extent to which we shall equip ourselves with specific types of equipments and services. As you are aware, we have pending before our Federal Communications Commission an application to permit the inauguration of a direct radio-telegraph circuit between your Administration and our Company which we hope will be finally approved under pending proceedings before that Commission. For that purpose, we would very much appreciate your views concerning the operating methods and services which you consider to be necessary or desirable for the operation of such a circuit.

With respect to operating methods, we would especially like to have your comments concerning frequency shift keying, printerization and multiplexing. It will be appreciated if you can advise us of your plans in connection with such methods of operation and whether and when you consider them to be advisable. We understand, of course, your plans, equipment and operating methods insofar as the initial operation of our mutual circuit is concerned,

Exhibit 85.

but are interested in knowing whether your plans for the future contemplate the types of operation referred to above.

We are interested also in having your views and plans with respect to the desirability of establishing additional non-message services such as program transmission and radiophoto, and further, on the extent of use of such services which you would anticipate from your end of the circuit in the event they are inaugurated. We will be prepared, of course, to furnish these services if your Administration so desires. In this connection, it would be helpful to know whether you are currently equipped for such services or the approximate date at which you could be equipped in the event you desire to commence such operations. It will also be necessary to know what system of photo service you will use if this service is desired.

Any information you may be able to furnish concerning the foregoing operating methods and services will be of great assistance.

With assurance of our complete cooperation at all times, and with best personal regards,

Sincerely yours,

/s/ L. SPANGENBERG,
Vice President.

Exhibit 86.**[3575]****COPY****COMPANHIA PORTUGUESE RADIO MARCONI****N/Ref 113890****Lisbon, 18th October, 1947**

Mr. L. Spangenberg,
Vice President,
Mackay Radio and Telegraph Co., Inc.
67 Broad Street,
New York 4, N. Y.

Dear Mr. Spangenberg:

I acknowledge receipt with thanks of your letter dated August 22, dealing with the operating methods to be followed in our direct circuit Lisbon/New York.

Presently we can only work the ordinary morse utilizing diversity reception without frequency shift.

It is, however, our intention to commence in the near future the printerization of the Lisbon/New York circuit, with the utilization of the frequency shift keying.

No multiplex is envisaged at present.

Regarding program transmission, we are prepared to do this service at once and for the photoservice we hope to be soon in a position to start it, employing the Times Telephoto equipment that we have on order from your associated Company Standard Electric.

As regards the extent of use of these to services, we do not anticipate a great use of the first one and are unable to predict for the radiophoto as this is not yet experienced between our two countries.

Reciprocating your kind personal regards,

Yours sincerely,

Companhia Portuguesa Radio Marconi
O Administrador Delegado

/s/ S. Vaz Pinto

Exhibit 92.**[3581]**

Atlantic City, 11 Sept. 1947

Mr. L. Spangenberg
Vice President
Mackay Radio and Telegraph Company, Inc.
New York.

Dear Mr. Spangenberg,

I have your letter of 9th September, P-75140, and if you want to have detailed information, I would have to refer this matter back home, as my specialists have already left.

I can give you, however, some global information.

We use on-off keying and also frequency shift methods. I do not believe we are presently in need of the corresponding equipment.

We prefer for the future, however, the use of teleprinting systems preferably the seven/five unit system with fault correction as developed by the Netherlands PTT (Van Duuren system). Should you be interested in this system we will gladly furnish you further information, including the patent position.

Although program transmission will to a certain extent be applied, we do not believe that any new telegraph channel, which we would open eventually with you, should be complicated for this purpose.

Radiophoto service was before the war used by us, although the demand was small. We did not yet restore this service, the relating equipment having been looted by the Germans. Also for this kind of service we do not see much use for our new channel with you.

Hoping the above will do for the moment, I am

With kindest personal regards,

Yours very truly

/s/ J. D. H. VAN DER TOORN

Exhibit 99.**[3583]****RCA COMMUNICATIONS, INC.****66 BROAD STREET****NEW YORK, N. Y.****IMPORTANT NOTICE.**

The employees of RCA Communications, Inc. are not involved in the strike action of the American Communications Association (CIO) against several cable and radio companies here in New York City, and hence our worldwide radiotelegraphic services are fully available to you.

You may file your international telegrams through any office of RCA Communications, Inc. with complete assurance of prompt and normal handling. Our facilities have been greatly enlarged, modernized and mechanized since the close of the war, and we are thoroughly prepared with adequate equipment, capacity and personnel to serve you.

In using our service you always secure advantages that are unparalleled because our huge network of circuits connects the United States DIRECTLY with more than sixty foreign countries.

RCA COMMUNICATIONS, INC.

Exhibit 120.**[3683]****COMPANHIA PORTUGUESA RADIO MARCONI****Sociedade Anonima De Responsabilidade Limitada****(Concessionaria Do Estado)**

Endereco Telegrafico: Inocerom

Telefones: 27211-2-3

Rua De S. Juliao, 131

Lisboa

Referencia No. 48249

Lisbon, 9th. May 1942

Mr. Chauncey Ryder Mc. Pherson
Vice-President of
All America Cables and Radio Inc.
New York

Dear Sir,

I am in receipt of your letter of today and, confirming our conversation of this morning, would inform you that, as soon as the Western Union Telegraph Company report to us that they relinquish to use the right, which appertains to them in the terms of Nr. 5 of the traffic agreement executed with them in December 1940, to maintain the said agreement in force during six months as from the 1st. instant; this Company is prepared to route through the Western Union Telegraph Company or the Commercial Cable Company, respectively, a proportion of the traffic which this Company eventually transmits to the United States of America via Cable, equal to the proportion of the traffic transmitted by each one of them from the United States of America to Portugal in relation to the total traffic of both concerns.

Exhibit 120.

I would also inform you that, once a second radiotelegraph circuit Lisbon New York is established, utilising the services of the Mackay Radio Telegraph Company, this Company will be prepared to apply a similar procedure in its telegraphic relations with the Mackay Radio Telegraph Company and the R. C. A. Communications Inc., with whom, as you know, we operate at present the sole existing radiotelegraph circuit between Portugal and the United States of America.

However, this arrangement can only be made after we receive the accord of the R. C. A. Communications to cancel the traffic agreement they executed with us in 1928.

As we informed the General Manager in London of the Western Union Telegraph Company, on the 22nd. April last; "we have foreseen the possibility to undertake to hand to each of the above mentioned American Companies a percentage of the total traffic from Portugal (Continent and Islands) to the United States of America equal to the percentage which the total traffic handed by each of them is to the total traffic from the United States of America to Portugal (Continent and Islands)".

[3684] As you will no doubt agree, that regime or any other which may eventually be considered more advisable, can only be established after the agreements foreseen in the declaration which we both sign today, are effected.

In regard to the possible establishment of a radiotelegraph circuit with the Mackay Radio Telegraph Company, I confirm our desire to commence tests rightaway with the said Company so as to ascertain the practicability of the circuit in question.

It is, however, understood that, for the establishment of the same circuit, with a daily period to be mutually agreed upon, it is indispensable that we should be supplied with the necessary material, a list of which will be sent to you as soon as we possibly can.

I have taken due note that the U. S. A. Government have already approved the establishment of a circuit with

Exhibit 120.

Portugal to be operated by the Mackay Telegraph Company and I confirm the information I gave you that, once the tests come to an end, this Company will submit the establishment of the said circuit to the approval of the Portuguese Government.

In view of the provisional arrangements I referred to above and the explanations I verbally gave you on the launching of the agreement still in force with the Western Union Telegraph Company, I feel sure you will not fail to admit that there will be no discrimination against the Commercial Cable Company, as there was none in the past.

In conclusion, I would inform you that the policy couched in this letter does not need the approval of His Excellency the Minister of Public Works and Communications and that the application of the principles herein contained should therefore be considered as a precarious one and without any commitment to this Company, until the subject of the aforesaid declaration of agreement is finally settled, declaration which, I may tell you, has the approval of His Excellency the Minister.

Wishing you a happy journey,

I am,

Yours sincerely

COMPANHIA PORTUGUESA RADIO MARCOSI
O Administrador Delegado
A. VAZ PINTO

JR RHR

Exhibit 121.**[3685]****COPY****ALL AMERICA CABLES AND RADIO, INC.****July 15, 1946**

Mr. P. F. Hart
Managing Director, Standard Electrica
Rua Augusta, 27
Lisbon, Portugal

Dear Mr. Hart:

. . .

As a matter of general interest Eng. Vaz Pinto might like to know that during the quarter above referred to, Commercial Cables transmitted to Portugal via London 1,676 messages, practically all of which originated in the United States, Canada and Newfoundland, and Mackay transmitted also via London 1,151 messages for the most part originating in the United States.

The messages of both CCC and MRT would be transmitted over the direct Lisbon-New York circuit should it be established, and none of their Portuguese traffic would be transmitted via Madrid.

Very sincerely yours,

C. R. McPherson
Vice President

Exhibit 126.**[3692]****OUTGOING SYSTEM MESSAGE**Prepared By
CRMCPCharge To
MRT

Date

From

October 16, 1947

C. R. McPherson

(Via CCC)

To

ENG. A. DE C. R. VAZ PINTO
MANAGING DIRECTOR
COMPANHIA PORTUGUESA RADIO MARCONI
RUA DE S. JULIAO, 131
LISBON PORTUGAL

I am delighted to be able to inform you that the Federal Communications Commission has licensed Mackay Radio and Telegraph Company to operate a telegraph circuit between Portugal and United States.

We are prepared to open immediately on 24-hour daily basis and assume you are on the basis of present rates and same division of tolls, accounting and settlements as you have in effect with R. C. A. C.

In event of interruption of the Lima circuit, we confirm that Latin American traffic may circulate over the New York circuit under the same terms and conditions governing transmission of messages over the Lima circuit and vice versa. This arrangement should insure an effective 24-hour service for both North and South American traffic.

Will Monday, October 20th, at 1500 GCT be a convenient time to open. Our Call Letters and frequency for contact will be WDT2 15535 KC. On which will you transmit.

You know the great personal satisfaction establishment of this service affords me.

Cordially, FOREST L. HENDERSON, Executive Vice President, Mackay Radio and Telegraph Company

Copies To:—

Original to Mr. McPherson

Messrs. McNamee Henderson Pratt Kennedy Jorgenson Tower Rauh

Exhibit 128.**[3694]****ALL AMERICA CABLES AND RADIO, INC.**

October 24, 1946

Mr. L. Nehier
Postmaster General
The Hague, Netherlands

Dear Mr. Postmaster General:

Referring to our conversation of yesterday regarding the establishment of a radiotelegraph circuit between stations of your Administration in Holland and the stations of Mackay Radio and Telegraph Company in New York, I wish to confirm my proposal with respect to the traffic which will be transmitted by Mackay over the circuit once it is established.

Mackay will transmit to your stations all traffic within its control originating in the United States or elsewhere and destined to points in Holland including Rotterdam.

The Commercial Cable Company will transfer to Mackay at New York for transmission over the circuit, all traffic within its control and not otherwise specifically routed by the sender, destined to all points in Holland except Rotterdam.

Mackay will guarantee that the volume of traffic transmitted by it over the circuit for any twelve months period shall never be less than 50% of the total volume of traffic within the control of Commercial and 70% of the total eastbound traffic destined to Holland handled by both these companies during the month August last, was destined to points in Holland outside of Rotterdam.

It is understood that your Administration will transmit to Mackay a proportion of its westbound traffic destined to the United States or for transit through the United States

Exhibit 130.

which will equal Mackay's proportion of the total east-bound radio traffic from or through the United States sent to Holland by all radio companies in the United States.

I wish to take this opportunity to thank you for the valuable assistance given The Commercial Cable Company in the reestablishment of its cable communication to Rotterdam and for your kindness in permitting the Company to operate in the offices of the PTT, pending the establishment of the Company's office.

Assuring you of the personal pleasure it has afforded me to meet you and your associate Mr. Van Dooren, and wishing you both a pleasant voyage to Holland, I am,

Sincerely yours,

FOREST L. HENDERSON
Vice President

Exhibit 130.

[3696]

MACKAY RADIO AND TELEGRAPH COMPANY, INC.

January 22, 1947

My Dear Mr. Neher:

Thank you for your letter of December 24th. We are delighted to learn your administration is agreeable to the establishment of a radiotelegraph circuit with the New York station of Mackay Radio and Telegraph Company and shall apply immediately for the necessary authority to work this end.

Due to the formalities connected with the application for and the granting of such license there may be some delay in its issuance. In the meantime we should like to receive your views regarding conditions to govern the operation of the circuit and for your convenience set forth

Exhibit 130.

below a brief resume of the terms and conditions already discussed:

1) Hours of operation as mutually agreed from time to time.

2) Mackay will transmit all its traffic destined to Holland and all traffic of The Commercial Cable Company destined to points in Holland excluding Rotterdam not otherwise routed and guaranty that the volume of traffic transmitted over any 12 months' period shall not be less than 50% of the total volume of traffic within control of Mackay and Commercial Cable destined to all Holland including Rotterdam.

3) Your administration will transmit all traffic routed via Mackay by the sender and a portion of its unrouted traffic destined to United States and beyond which will bear to your total volume of traffic to or through United States the same ratio which the volume received from Mackay bears to the total volume received from all radio companies in the United States.

4) The rates and proportions now applying to the RCA circuit shall apply and may be modified by mutual agreement from time to time.

5) On messages between United States and its possessions, on the one hand, and Holland, on the other, the gold franc shall be converted at 5.1825 gold francs to the dollar, and on all other messages at 3.061 gold francs to the dollar.

(Since our original discussions of this subject we have extended the 5.1825 gold francs ratio to U. S. possessions.)

6) Balances shall be paid in U. S. dollars at New York.

7) In the event of interruption of the New York circuit, traffic normally circulating over it shall be diverted via Lima under terms applying to the New York circuit, and in the event of interruption of the Lima circuit, traffic nor-

Exhibit 131.

mally circulating over it shall be diverted via New York under terms applying to the Lima circuit.

[3697] 8) The term of the agreement shall be for 20 (twenty) years automatically renewed for 5 (five) year periods unless terminated at the end of any period by one year's notice in advance.

With kindest personal regards and best wishes for the New Year, I am,

Sincerely yours,

FOREST L. HENDERSON,
Executive Vice President.

Mr. L. NEHER,

Postmaster General of The Netherlands,
The Hague, The Netherlands.

*Exhibit 131.***[3698] OUTGOING SYSTEM MESSAGE**

Prepared by CRMCP

Charge to MRT

Date October 17, 1947

From F. L. Henderson

(Via Mackay Radio)

W S L

To

J. D. H. VAN DER TOORN

SS, *Veendam*

Delighted inform you Federal Communications Commission licensed Mackay Radio and Telegraph Company to communicate with The Hague, Holland.

Exhibit 131.

We are prepared inaugurate 24-hour daily service immediately and assume you are on basis of present rates and same division of tolls, accounting and settlement as presently in effect with R. C. A. C.

Our agreement that in event of interruption of Lima circuit Latin American traffic may circulate via New York under terms and conditions governing transmission via Lima and vice versa is confirmed so that we now will have an insured 24-hour service for both North and South American business.

We dislike intruding upon your holiday but in view of the importance of the connection feel you may wish to telegraph your office to take the necessary steps to inaugurate the service as soon as possible.

Our call letters and frequency will be WKIT 16210 KC for start at 1500 GCT on date you indicate. Kindly advise your frequencies.

Cordially, FOREST L. HENDERSON, Executive Vice President, Mackay Radio and Telegraph Company.

Exhibit 136.**Translation of the Agreement Between the Administration
of Posts, Telegraphs and Telephones and The
Commercial Cable Company**

concerning the use of a télégraph connection between the Netherlands and Great Britain and the establishment by The Commercial Cable Company of an office in the Netherlands.

Between the ADMINISTRATION OF POSTS, TELEGRAPHS AND TELEPHONES at the Hague hereinafter called "the Administration", represented by the Director General of Posts, Telegraphs and Telephones, hereinafter called "the Director General" and the Commercial Cable Company established in the State of New York, who in respect of this present Agreement elects domicile at the address of, and in accordance with its By-Laws is represented by Mr. James Milne in London referred to in this Agreement as "the Company".

It is hereby agreed in the matter of a contract for work, as follows:

ARTICLE 3.

If diversion of traffic is necessitated by interruption or delay on the direct cable route, such diversion westward and eastward, shall be used with preference of firstly Holland Radio/Mackay Radio New York, provided that route is available; secondly Holland Radio/A.A.C. Lima. If neither of these two routes is to be considered as the best way, diversion westward will be as ordered by the Administration, and eastward by the free selection of the Company.

Exhibit 138-A.**[3721] THE COMMERCIAL CABLE COMPANY****LONDON**

9th, November, 1936.

No. MG. 11

J. Goldhammer, Esq.,
Commercial Vice President,
New York.

Dear Sir,

As you are no doubt aware, telephone subscribers at The Hague are able to get into direct contact with the Holland Radio at Amsterdam by requesting a special number (180350). This means that the Holland Radio Amsterdam is practically a 'phone subscriber in the municipal telephone district of The Hague and that, consequently, subscribers in that City can 'phone their traffic to Holland Radio, Amsterdam, at the price of a local call.

Van Vloten has now been advised by the Dutch Administration that in addition to the above facility rendered at The Hague, they will also supply to firms at The Hague a municipal telephone free of charge, provided the firms will file with the Holland Radio traffic to the Americas to the value of 2,500 florins per year, which, incidentally, is the same amount as fixed for the private wires at Amsterdam and Rotterdam. The annual rental paid by telephone subscribers at The Hague is 57 florins, so that in effect firms who file with the Holland Radio traffic to America to the amount of 2,500 florins per year will receive a free telephone, or what might be described as a rebate of 57 florins in their cabling bill.

Exhibit 138A.

In advising us of this the Administration stated that we were authorized to grant the same facility to firms at The Hague, provided that at the same time we arranged that a direct connection between our office and the office of the Municipal Telephone Service at the Hague was established. As, however, the cost to us of renting this connection would be 5,000 florins per annum, you will appreciate the useless nature of the Administration's gesture.

Strong protests have been lodged with the Administration in writing and by Van Vloten verbally, but with no result; and we were finally advised on October 6th that the Administration saw no reason to revise their decision nor to change the conditions which are imposed on our Company.

In acknowledging this communication on October 13th, we informed the Administration that practically they were paying an amount of 37 florins per annum in exchange for a traffic file of 2,500 florins via Holland Radio and requested that we in our turn would like to be authorized to pay a similar amount for a traffic volume of 2500 florins via Commercial, if required. No reply has yet been received to the above.

This is a further illustration of unfair competition by the Government route in Holland, and I am afraid we can do nothing further but observe results on our traffic from The Hague, which at present averages round about 380 messages monthly, and at the same time try and hold what we have got by an intensive canvass.

Yours very truly

J. MILNE
Manager in England.

UNITED STATES INTER-OCEANIC
STATEMENT OF TELEGRAPH WORD TRAFFIC
 • (Including Transiting Traffic) in

	All America Cables and Radio, Inc.	The Commercial Cable Company	Cable Carriers The Western Union Telegraph Company	
	23,270,679	53,771,263	91,190,385	16,000,000
	24,111,877	55,653,263	96,692,418	18,000,000
	22,110,920	48,946,900	89,567,172	16,000,000
	25,471,772	52,852,393	102,132,955	19,000,000
	27,628,522	45,184,592	117,525,587	20,000,000
	34,301,811	36,855,880	128,199,141	23,000,000
	43,920,083	52,204,154	181,136,523	22,000,000
	43,476,831	66,172,140	262,335,514	14,000,000
	48,638,004	93,027,766	277,979,774	7,000,000
	54,499,177	69,388,770	236,221,457	13,000,000
	57,951,998	55,648,348	197,527,557	14,000,000
First six months	32,531,326	30,118,767	96,446,095	5,000,000

36-1943 from S. Res. 187, Part 2.

44-1945 from F. C. C. Docket No. 8230, Exhibit 133.

46-1947 from Carriers Responses to F. C. C. Order No. 85.

Exhibit 160.

INTERNATIONAL TELEGRAPH CARRIERS
 CARDS HANDLED TO AND FROM THE UNITED STATES
 in the Period from 1936 Through June 30, 1947.

Radiotelegraph Carriers						C of Rad C
Others	Total	Mackay Radio and Telegraph Company	R. C. A. Communi- cations Inc.	Others	Total	
16,620,403	184,852,721	7,048,558	53,634,602	15,006,942	76,290,102	26
18,747,918	195,505,286	9,291,911	60,558,958	15,860,858	85,811,730	28
16,161,237	175,886,228	7,849,799	57,794,097	14,711,880	80,355,776	25
19,137,397	199,594,517	11,032,977	74,519,384	16,738,619	102,281,971	30
20,777,553	211,116,254	15,089,921	99,536,347	24,932,393	131,558,661	35
23,716,380	223,073,212	18,069,152	118,680,845	31,374,898	168,130,895	39
22,793,713	300,054,473	15,581,719	107,321,870	44,276,625	167,180,214	46
14,736,839	386,321,321	40,188,728	113,143,711	48,083,917	201,416,286	58
7,474,934	427,116,478	46,519,514	152,057,564	67,607,166	266,186,244	69
13,034,036	373,148,440	60,937,995	228,178,695	88,439,743	377,556,433	75
14,088,387	325,219,290	74,525,856	232,988,420	65,015,630	372,229,906	60
5,845,553	164,941,741	45,531,772	108,611,531	23,470,132	177,613,435	34

Exhibit 162.

UNITED STATES INTERNATIONAL TELEGRAPH STATEMENT OF TELEGRAPH WORDS OUTBOUND FROM THE UNITED STATES (INCLUDING TRANSITING

In the Period from 1936 Through June 30,

Total Telegraph Words			Total Cable Telegram	
Combined	Outbound from U. S.	Inbound to U. S.	Combined	Outbound from U. S.
261,142,823	135,888,702	125,254,121	184,852,721	103,514,489
281,317,016	147,293,502	134,023,514	195,505,286	110,559,053
256,242,005	130,614,042	125,627,963	175,886,229	98,057,200
301,876,488	153,637,793	148,238,695	199,594,517	111,064,777
350,674,915	180,991,510	169,683,405	211,116,254	118,224,027
391,204,167	202,273,875	188,930,232	223,073,212	122,863,154
467,234,687	217,388,189	249,846,498	300,054,473	153,659,311
587,837,607	269,905,849	317,931,758	386,421,321	189,804,648
693,302,722	312,649,601	380,653,121	427,116,478	200,833,339
750,704,873	346,611,778	404,093,095	373,148,440	186,987,859
697,449,196	342,975,144	354,474,052	325,219,290	172,890,413
342,555,176	176,451,658	166,103,518	164,941,741	90,111,244

Res. 187, Part 2.
C. C. Docket No. 8230, Exhibit 133.
Carriers' Responses to F. C. C. Order No. 85.

GRAPH CARRIERS

OM AND INBOUND TO ING TRAFFIC)

30, 1947

Graph Words nd S.	Inbound to U. S.	Total Radio Telegraph Words		
		Combined	Outbound from U. S.	Inbound to U. S.
489	81,338,232	76,290,102	32,374,213	43,915,889
053	84,946,233	85,841,730	36,734,449	49,077,281
200	77,829,029	80,355,776	32,556,842	47,798,934
777	88,529,740	102,281,971	42,573,016	59,708,955
027	92,892,227	139,558,661	62,767,483	76,791,178
54	100,210,058	168,130,895	79,410,721	88,720,174
311	146,395,162	167,180,214	63,728,878	103,451,336
648	196,616,673	201,416,286	80,101,201	121,315,085
339	226,283,139	266,186,244	111,816,262	154,369,982
859	186,160,581	377,556,433	159,623,919	217,932,514
413	152,328,877	372,229,906	170,084,731	202,145,175
244	74,830,497	177,613,435	86,340,414	91,273,021

Exhibit 163.

MACKAY RADIO AND TELEGRAPH COMPANY

STATEMENT OF INTERNATIONAL RADIOTELEGRAPH WORDS HANDLED OUTBOUND FROM AND INBOUND TO THE UNITED STATES (INCLUDING TRANSITING TRAFFIC)

During the Years 1944, 1945, 1946 and Six Months Ended June 30, 1947

By Classes of Service

With Similar Data for All Radiotelegraph Carriers Combined

	1944			1945		
	Outbound	Inbound	Total	Outbound	Inbound	Total
MACKAY RADIO AND TELEGRAPH COMPANY:						
Public	8,310,381	11,370,850	19,681,231	14,533,131	22,089,897	36,623,028
Government	6,310,140	3,025,855	9,335,995	4,506,532	2,325,106	6,831,638
Press	2,920,117	6,812,699	9,732,816	2,875,016	5,533,940	8,408,956
Greetings, etc.....	1,445,477	6,323,995	7,769,472	2,114,195	6,960,178	9,074,373
	<u>18,986,115</u>	<u>27,533,399</u>	<u>46,519,514</u>	<u>24,028,874</u>	<u>36,909,121</u>	<u>60,937,995</u>
ALL RADIOTELEGRAPH CARRIERS COMBINED:						
Public	50,812,303	54,631,184	105,443,487	87,623,517	105,207,122	192,830,639
Government	24,092,168	20,039,665	44,131,833	20,463,465	23,072,032	43,535,497
Press	29,852,706	58,528,022	88,380,728	44,373,467	66,870,730	111,244,197
Greetings, etc.....	7,059,085	21,171,111	28,230,196	7,163,470	22,782,630	29,946,100
	<u>111,816,262</u>	<u>154,369,982</u>	<u>266,186,244</u>	<u>159,623,919</u>	<u>217,932,514</u>	<u>377,556,433</u>

	1946			First Six Months 1947		
	Outbound	Inbound	Total	Outbound	Inbound	Total
MACKAY RADIO AND TELEGRAPH COMPANY:						
Public	27,435,742	28,821,571	56,257,313	18,899,021	18,971,993	37,871,014
Government	5,008,095	3,012,389	8,020,484	2,734,283	1,598,777	4,333,060
Press	2,439,076	1,790,703	4,229,779	954,024	932,073	1,886,097
Greetings, etc.....	268,376	5,749,904	6,018,280	30,151	1,411,450	1,441,601
	<u>35,151,289</u>	<u>39,374,567</u>	<u>74,525,856</u>	<u>22,617,479</u>	<u>22,914,293</u>	<u>45,531,772</u>
ALL RADIOTELEGRAPH CARRIERS COMBINED:						
Public	122,493,173	125,199,058	247,692,231	68,995,406	67,986,594	136,982,000
Government	16,177,593	15,651,271	31,828,864	7,088,547	6,594,512	13,683,059
Press	30,288,533	40,746,925	71,035,508	10,029,568	12,567,806	22,597,374
Greetings, etc.....	1,125,432	20,547,871	21,673,303	226,893	4,124,109	4,351,002
	<u>170,084,731</u>	<u>202,145,175</u>	<u>372,229,906</u>	<u>86,340,414</u>	<u>91,273,021</u>	<u>177,613,435</u>

Source—1944-1945 from F. C. C. Docket No. 8230, Exhibit 133.

1946-1947 from Carriers' Responses to F. C. C. Order No. 85.

[3779]

Exhibit 163-A.

ALL AMERICA CABLES AND RADIO, INC.
THE COMMERCIAL CABLE COMPANY

**STATEMENT OF TELEGRAPH WORDS HANDLED TO AND FROM
 THE UNITED STATES (INCLUDING TRANSITING TRAFFIC)
 During the Years 1944, 1945, 1946 and the First Six Months of 1947**

ALL AMERICA CABLES AND RADIO, INC.:

	1944	1945	1946	First Six Months 1947
Public	32,107,989	42,423,081	50,357,586	28,890,783
Government	10,695,574	8,674,232	5,247,116	2,200,184
Press	5,230,393	2,808,995	2,257,462	1,404,659
Greetings, etc.	600,138	592,869	92,834	35,700
	<u>48,634,094</u>	<u>54,499,177</u>	<u>57,954,998</u>	<u>32,531,326</u>

THE COMMERCIAL CABLE COMPANY:

Public	19,422,258	25,715,308	35,991,404	21,002,326
Government	59,260,279	32,685,639	9,233,074	3,799,632
Press	10,119,719	5,380,899	8,777,009	5,085,539
Greetings, etc.	4,225,510	5,606,924	1,646,861	231,270
	<u>93,027,766</u>	<u>69,388,770</u>	<u>55,648,348</u>	<u>30,118,767</u>

Exhibit 168.

**THE COMMERCIAL CABLE COMPANY
MACKAY RADIO AND TELEGRAPH COMPANY
R. C. A. COMMUNICATIONS, INC.
THE WESTERN UNION TELEGRAPH COMPANY**

COMPARATIVE STATEMENT OF TRAFFIC TO AND FROM PORTUGAL

For the Three Months October, November and December 1947
(Originating and Terminating in and Transiting the United States)

	October 1947		November 1947		December 1947	
	Amount	Percent	Amount	Percent	Amount	Percent
OUTBOUND—						
	MESSAGES					
The Commercial Cable Company.....	534	5.7	348	4.5	448	4.8
Mackay Radio and Telegraph Company.....	608	6.4	926	11.9	1,067	11.4
A. C. & R. group.....	1,142	12.1	1,274	16.4	1,515	16.2
R. C. A. Communications, Inc.....	5,392	57.3	4,379	56.3	5,137	54.9
The Western Union Telegraph Company.....	2,881	30.6	2,128	27.3	2,707	28.9
Total	9,415	100.0	7,781	100.0	9,359	100.0
INBOUND—						
The Commercial Cable Company.....	124	1.6	111	1.7	100	1.3
Mackay Radio and Telegraph Company.....	337	4.3	925	14.1	1,644	21.8
A. C. & R. group.....	461	5.9	1,036	15.8	1,744	23.1
R. C. A. Communications, Inc.....	6,652	85.0	4,940	75.4	5,213	69.1
The Western Union Telegraph Company.....	716	9.1	574	8.8	584	7.8
Total	7,829	100.0	6,550	100.0	7,541	100.0

EXHIBIT 168.

	October 1947		November 1947		December 1947	
	Amount	Percent	Amount	Percent	Amount	Percent
OUTBOUND—						
	WORDS					
The Commercial Cable Company.....	16,464	5.3	9,140	3.8	11,308	4.3
Mackay Radio and Telegraph Company.....	17,125	5.5	25,406	10.7	27,310	10.3
A. C. & R. group.....	33,589	10.8	34,546	14.5	38,618	14.6
R. C. A. Communications, Inc.....	165,833	53.6	127,865	53.6	137,139	51.9
The Western Union Telegraph Company.....	110,165	35.6	76,966	31.9	88,307	33.5
Total	309,587	100.0	238,477	100.0	264,064	100.0
INBOUND—						
The Commercial Cable Company.....	3,041	1.4	2,813	1.5	2,726	1.4
Mackay Radio and Telegraph Company.....	7,659	3.5	20,380	10.8	35,063	18.7
A. C. & R. group.....	10,700	4.9	23,193	12.3	37,789	20.1
R. C. A. Communications, Inc.....	184,232	83.6	141,279	74.9	131,476	70.1
The Western Union Telegraph Company.....	25,490	11.5	24,178	12.8	18,395	9.8
Total	220,422	100.0	188,650	100.0	187,660	100.0

OUTBOUND—						
	REVENUE					
The Commercial Cable Company.....	\$ 228.47		\$ 141.40		\$ 177.56	
Mackay Radio and Telegraph Company.....	103.81		4.81		270.73	
A. C. & R. group.....	332.28		146.21		448.29	
R. C. A. Communications, Inc.....	(3,998.58)		(3,131.56)		(3,963.35)	
The Western Union Telegraph Company.....	(888.00)		(668.00)		(586.00)	
Total	(\$4,554.30)		\$(3,653.35)		\$(4,101.06)	
INBOUND—						
The Commercial Cable Company.....	\$ 258.20		\$ 212.58		\$ 230.07	
Mackay Radio and Telegraph Company.....	857.73		2,679.00		4,643.46	
A. C. & R. group.....	1,115.93		2,891.58		4,873.53	
R. C. A. Communications, Inc.....	20,651.76		14,915.62		14,439.65	
The Western Union Telegraph Company.....	1,568.00		1,105.00		890.00	
Total	\$23,031.69		\$18,912.20		\$20,203.18	

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Exhibit 168.

Exhibit 173.

[3791]

CAPACITY OF RCA CIRCUITS TO NETHERLANDS, PORTUGAL AND SURINAM

Country	Hours of Operation	Present	Method of Operation	Proposed	Capacity (Words per Hour) (60%)	Avg. Present TFC. W.P.H. 6AM-6PM Includes non paid words	Excess Capacity (W.P.H.)	Industry Traffic*	RCA Participation*	% RCA to Industry
			MORSE, TELEX ON MULTIPLEX	NO CHANGE						
NETHERLANDS	CONTINUOUS	MORSE		5-UNIT SATISFACTORY TESTS HAVE BEEN CONDUCTED.	10,800	704	10,096	3,505,607	1,944,678	29.8
PORTUGAL	CONTINUOUS	5-UNIT		NO CHANGE	2,700	357	2,343	1,534,178	758,179	49.4
SURINAM	6 AM-8 PM				2,100	18	2,112	88,576	42,230	47.7

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* NUMBER OF WORDS INCLUDING TRANSITING—FIRST HALF OF 1947.

[3792]

CAPACITY OF RCA CIRCUITS FROM NETHERLANDS, PORTUGAL AND SURINAM

Country	Hours of Operation	Present	Method of Operation	Proposed	Capacity (Words per Hour) (60%)	Avg. Present TFC. W.P.H. 6AM-6PM Includes non paid words	Excess Capacity (W.P.H.)	Industry Traffic*	RCA Participation*	% RCA to Industry
			MORSE, TELEX ON MULTIPLEX	NO CHANGE						
NETHERLANDS	CONTINUOUS	MORSE		5-UNIT SATISFACTORY TESTS HAVE BEEN CONDUCTED.	10,800	1,421	9,379	3,062,072	1,576,493	51.5
PORTUGAL	CONTINUOUS	5-UNIT		NO CHANGE	2,700	835	1,865	1,073,782	860,786	80.2
SURINAM	6 AM-8 PM				2,100	47	2,113	83,166	83,166	100

Exhibit 173.

517

* NUMBER OF WORDS INCLUDING TRANSITING—FIRST HALF OF 1947.

February 1, 1948

FEDERAL BUREAU OF INVESTIGATION
DOCKET NO. 100-44289
EXHIBIT NO. 190
OFFICE OF THE ATTORNEY GENERAL, N. COLEMAN SHAPIRO
HOUR REPORTERS, INC.

[3160]

Exhibit 191.**RCA COMMUNICATIONS, INC.**

**ESTIMATED EFFECT UPON CIRCUIT NET OPERATING RESULTS
OF RCA IF MACKAY IS AUTHORIZED TO ESTABLISH SPLIT CIRCUITS WITH
THE NETHERLANDS, PORTUGAL AND SURINAM
BASED ON DATA FOR THE FIRST SIX MONTHS OF 1947**

Circuit (a)	No. of Equated Paid Words, Handled (Incl: Transiting Traffic) (b)	Revenue to RCA at Rates Made Effective April 28, 1948 (c)	Cost of Operating Circuit ¹ (d)	Gain or (Loss) from RCA Single Circuit Operation (e) = (c-d)	Loss of Revenue to RCA if MRT Operates Split Circuit— Percent ² (f)	Amount (g)	Gain or (Loss) from Circuit Operation after effect of Revenue Loss if MRT operates Split Circuit ³ (h) = (e-g)
<i>The Netherlands</i>							
Outbound.....	436,933	\$ 85,025	\$	\$	36.9%	\$ 31,297	\$
Inbound.....	758,942	75,894			37.6%	28,510	
	<u>1,195,875</u>	<u>160,919</u>	111,146	49,773		<u>59,807</u>	(10,034)
<i>Portugal</i>							
Outbound.....	364,118	(2,224)			36.9%	(688)	
Inbound.....	416,929	105,483			37.6%	39,500	
	<u>781,047</u>	<u>103,259</u>	78,484	24,775		<u>38,812</u>	(14,037)
<i>Surinam</i>							
Outbound.....	21,081	3,226			36.9%	996	
Inbound.....	44,603	4,906			37.6%	1,845	
	<u>65,684</u>	<u>8,132</u>	10,634	(2,502)		<u>2,841</u>	(5,343)
<i>Total.....</i>	<u>2,042,606</u>	<u>\$ 272,310</u>	<u>\$ 200,264</u>	<u>\$ 72,046</u>		<u>\$ 101,460</u>	<u>\$ (29,414)</u>

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¹ Computed in accordance with formula agreed to by the Carriers for General Circuits Case, FCC Docket No. 7974.

² See Schedule I of this Exhibit.

³ If MRT is granted split circuits the cost of operating the circuits of RCA is expected to remain as indicated in Column (d).

RCA COMMUNICATIONS, INC.

STATEMENT SHOWING COMPUTATION OF ESTIMATED REVENUE DIVERSION TO MACKAY RADIO & TELEGRAPH COMPANY FROM SPLIT CIRCUIT OPERATION AS SHOWN ON EXHIBIT NO. 191

Particulars	Holland	Outbound Portugal	Surinam	Holland	Inbound Portugal	Surinam
1. The number of actual words handled by Mackay Radio (U. S. originations and transiting) FCC Exhibit X 7, FCC Docket No. 8230.....	1,507	81,743	6,174	962	2,352	
2. The number of equated words transmitted by Mackay Radio:						
Outbound—Line 1 x 42%	633	34,332	2,593			
Inbound —Line 1 x 43.5%				419	1,023	
(The factors of 42% and 43.5% were determined by the equation of total outbound and inbound words for the industry—FCC Exhibit X7, Docket No. 8230)						
3. The number of equated words handled by RCA—Exhibit 191, Column (b)—FCC Docket No. 8777	436,933	364,118	21,081	758,942	416,929	44,603
4. The total number of equated words available.....	437,566	398,450	23,674	759,361	417,952	44,603

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EXHIBIT 191-A.

Particulars	Holland	Outbound Portugal	Surinam	Holland	Inbound Portugal	Surinam
5. The number of equated words estimated to be shared by Mackay Radio if a split circuit is operated by that carrier:						
Outbound—Line 4 x 36.9%.....	161,462	147,028	9,104			
Inbound —Line 4 x 37.6%.....				285,520	157,150	16,770
(The percentages 36.9% and 37.6% were developed as indicated on Exhibit 192—FCC Docket No. 8777)						
6. Less: The number of equated words now being handled by Mackay Radio—Line 2/.....	633	34,332	2,593	419	1,023	
7. The number of equated words estimated to be diverted from RCA if Mackay Radio operates split circuits—Line 5-6	160,829	112,696	6,511	285,101	156,127	16,770
8. Percent of estimated diversion from RCA to Mackay Radio—Line 7 ÷ Line 3.....	36.81%	30.95%	30.88%	37.57%	37.45%	37.6%
9. RCA revenue—Exhibit 191, Column (c) FCC Docket No. 8777	\$ 85,025	(\$ 2,224)	\$ 3,226	\$ 75,894	\$105,483	\$ 4,906
10. Revenue related to estimated diversion from RCA to Mackay Radio—Line 9 x percentages of Line 8	\$ 31,297	(\$ 688)	\$ 996	\$ 28,510	\$ 39,500	\$ 1,845

Exhibit 191-A.

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NOTE: Parentheses denote reverse figure.

RCA COMMUNICATIONS, INC.

ESTIMATED GAIN OR (LOSS) FROM OPERATIONS

(A) RCA OPERATION OF SPLIT CIRCUITS

(B) REVENUE EFFECT FROM INCLUSION OF MACKAY TRAFFIC VOLUME ON A SINGLE CIRCUIT BASIS

Based on Data for the First Six Months of 1947

Circuit (a)	Number of Equated Words Actually Handled By RCA (b)	RCA Traffic Volume Plus MRT Traffic Volume (c)	Revenue to RCA at rates Made effective 4/28/48		Cost of Operation		Gain or (Loss)	
			From Handling Tfc. Volume Shown in Col. (b) ¹ (d)	From Handling Tfc. Volume Shown in Col. (c) ¹ (e)	To handle Traffic Volume Shown in Column (b) (f)	To handle Traffic Volume Shown in Column (c) (g)	Net effect of Col. (d) Less Col. (f) (h)	Net effect of Col. (e) Less Col. (g) (i)
Bermuda.....	17,549	29,991	\$ 1,861	\$ 3,165	\$ 3,854	\$ 3,875	\$ (1,993)	\$ (710)
China.....	2,245,114	3,626,233	194,715	315,241	111,509	124,312	83,206	190,929
Czechoslovakia.....	276,172	611,761	43,188	95,134	33,218	33,776	9,970	61,358
Egypt.....	620,055	1,097,083	78,358	148,325	66,882	67,677	11,476	80,648
Great Britain.....	7,244,888	8,838,289	545,991	716,275	618,639	621,301	(72,648)	94,974
New Zealand.....	101,526	185,735	14,684	26,373	4,954	5,430	9,730	20,943
Australia.....	844,317	*1,323,934	108,745	171,766	52,049	54,749	56,696	117,017
India.....	1,917,146	2,695,316	266,190	374,231	232,340	236,153	33,850	138,078
Italy.....	1,787,589	2,465,704	253,746	356,321	171,983	173,122	81,763	183,199
Japan.....	823,221	1,261,483	91,985	141,280	44,161	46,588	47,824	94,692
U. S. S. R.....	1,206,745	2,676,285	164,958	369,991	231,254	233,716	(66,296)	136,275
TOTAL.....	17,084,322	24,811,814	\$1,764,421	\$2,718,102	\$1,570,843	\$1,600,699	\$ 193,578	\$1,117,403

¹ Includes deduction for estimated tolls to Western Union.

Exhibit 191-C.

RCA COMMUNICATIONS, INC.

ESTIMATED EFFECT UPON CIRCUIT NET OPERATING RESULTS OF RCA IF MACKAY IS AUTHORIZED TO ESTABLISH SPLIT CIRCUITS WITH THE NETHERLANDS, PORTUGAL AND SURINAM

Based on Data for the First Six Months of 1947

Circuit (a)	No. of Equated Paid Words Handled (Incl. Transiting Traffic) (b)	Revenue to RCA at rates made effective April 28, 1948 (c)	Loss of Revenue to RCA if MRT operates Split Circuits		Cost of Operating Circuit ² (f)	Gain or (Loss) from circuit operation after effect of Revenue Loss if MRT operates Split circuits (g) = (c-e+f)
			Percent ¹ (d)	Amount (e)		
THE NETHERLANDS						
Outbound.....	436,933	\$ 85,025	36.9%	\$ 31,297	\$	\$
Inbound.....	758,942	75,894	37.6%	28,510		
	1,195,875	160,919		59,807	75,423	25,689
PORTUGAL						
Outbound.....	364,118	(2,224)	36.9%	(688)		
Inbound.....	416,929	105,483	37.6%	39,500		
	781,047	103,259		38,812	57,065	7,382
SURINAM						
Outbound.....	21,081	3,226	36.9%	996		
Inbound.....	44,603	4,906	37.6%	1,845		
	65,684	8,132		2,841	8,777	(3,486)
TOTAL.....	2,042,606	\$272,310		\$101,460	\$141,265	\$29,585

¹ See Schedule I of RCA Exhibit No. 191.² Computed in accordance with formula agreed to by the Carriers for General Circuits Case, FCC Docket No. 7974. Costs shown in Column (d) RCA Exhibit 191 have been adjusted to give effect to the volume reduction used as the basis for computing revenue loss shown in Column (e).

Exhibit 191-D.

[3864]

RCA COMMUNICATIONS, INC.

ESTIMATED GAIN OR (LOSS) FROM SELECTED CIRCUIT OPERATIONS

Based on Data for the First Six Months of 1947
(Previously included in Exhibits 191, 191B, and 191C)

Circuit	Number of Equated Words		Revenue to RCA at Rates Made Effective 4/28/48		Cost of Operation		Gain or (Loss)	
	Actually Handled By RCA	RCA Traffic Volume Plus MRT Traffic Volume	From Handling Tfc. Volume Shown in Col. (b) ¹	From Handling Tfc. Volume Shown in Col. (c) ¹	To Handle Traffic Volume Shown in Column (b)	To Handle Traffic Volume Shown in Column (c)	Net Effect of Col. (d) Less Col. (f)	Net Effect of Col. (e) Less Col. (g)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
Bermuda.....	17,549	29,991	\$ 1,861	\$ 3,165	\$ 3,873	\$ 3,875	\$ (2,012)	\$ (710)
China.....	2,245,114	3,626,233	194,715	315,241	111,509	124,312	83,206	190,929
Czechoslovakia.....	276,172	611,761	43,188	95,134	33,565	33,776	9,623	61,358
Egypt.....	620,055	1,097,083	78,358	148,325	67,676	67,677	10,682	80,648
Great Britain.....	7,244,888	8,838,289	545,991	716,275	627,108	621,301	(81,117)	94,974
New Zealand.....	101,526	185,735	14,684	26,373	4,954	5,430	9,730	20,943
Australia.....	844,317	1,323,934	108,745	171,766	52,049	54,749	56,696	117,017
India.....	1,917,146	2,695,316	266,190	374,231	234,586	236,153	31,604	138,078
Italy.....	1,787,589	2,465,704	253,746	356,321	174,119	173,122	79,627	183,199
Japan.....	823,221	1,261,483	91,985	141,280	44,161	46,588	47,824	94,692
U. S. S. R.....	1,206,745	2,676,285	164,958	369,991	233,278	233,716	(68,320)	136,275
	17,084,322	24,811,814	1,764,421	2,718,102	1,586,878	1,600,699	177,543	1,112,403
The Netherlands.....	749,945 ²	1,195,875 ³	95,749 ⁴	152,367 ⁵	75,423 ⁶	111,146 ⁷	20,326 ⁸	41,221 ⁹
Portugal.....	512,224 ²	781,047 ³	58,105 ⁴	93,589 ⁵	57,065 ⁶	78,484 ⁷	1,040 ⁸	15,105 ⁹
Surinam.....	42,403 ²	65,684 ³	5,013 ⁴	7,705 ⁵	8,777 ⁶	10,634 ⁷	(3,764) ⁸	(2,929) ⁹
	1,304,572	2,042,606	158,867	253,661	141,265	200,264	17,602	53,397
TOTAL.....	18,388,894	26,854,420	\$1,923,288	\$2,971,763	\$1,728,143	\$1,800,963	\$ 195,145	\$1,170,800

NOTE: The amounts shown on this exhibit relate to Operating Revenue and Operating Revenue Deductions only. No provision has been made for Federal Income Tax or return on investment dedicated to utility service.

See Page 2 for Footnotes.

[3865]

RCA COMMUNICATIONS, INC.

ESTIMATED GAIN OR (LOSS) FROM SELECTED CIRCUIT OPERATIONS

Based on Data for the First Six Months of 1947
(Previously included in Exhibits 191, 191B, and 191C)

FOOTNOTES

¹ Includes deduction for estimated landline tolls to Western Union.

² After reduction for estimated equated words to be diverted from RCA if Mackay Radio operates split circuits, line 7 of Exhibit 191A, FCC Docket No. 8777, The Netherlands 445,930 words; Portugal 268,823 words, and Surinam 23,281 words.

³ Column (b) Exhibit 191C, FCC Docket No. 8777.

⁴ Column (c) less Column (e) Exhibit 191C, FCC Docket No. 8777 less estimated landline tolls to Western Union as follows:—The Netherlands \$5,363; Portugal \$6,342, and Surinam \$278.

⁵ Column (c) Exhibit 191, FCC Docket No. 8777 less estimated landline tolls to Western Union as follows:—The Netherlands \$8,552; Portugal \$9,670, and Surinam \$427.

⁶ Column (f) Exhibit 191C, FCC Docket No. 8777.

⁷ Column (d) Exhibit 191, FCC Docket No. 8777.

⁸ The amounts in Column (h) of this Exhibit for The Netherlands, Portugal, and Surinam do not show the full effect on the RCA system from the grant of the MRT applications. The full effect from a grant of the MRT applications is shown by Exhibit 191, Column (h) and the testimony on that Exhibit. Exhibit No. 191 and the accompanying testimony show that after deduction of estimated landline tolls to Western Union, the operations for a six months period would show for The Netherlands a loss of \$15,397; for Portugal a loss of \$20,379, and for Surinam a loss of \$5,621, or a total loss of \$41,397 for the three circuits.

⁹ Column (d) Exhibit 191, FCC Docket No. 8777 less estimated landline tolls to Western Union as shown in footnote 5 above.

Exhibit 191-D

Exhibit 192.

[3866]

RCA COMMUNICATIONS, INC.

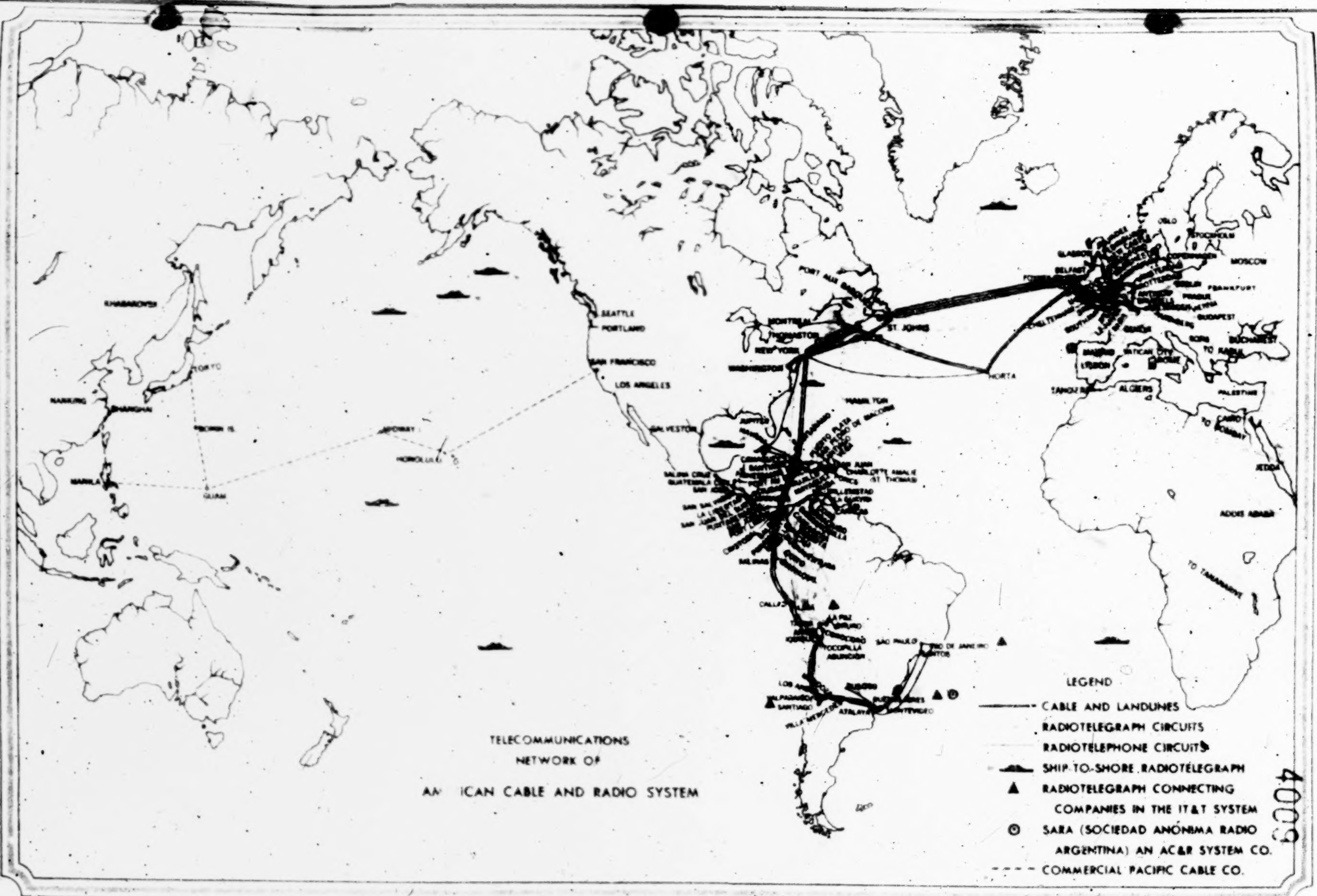
PERCENT PARTICIPATION OF RCA COMMUNICATIONS, INC. AND MACKAY RADIO AND TELEGRAPH COMPANY IN WORD TRAFFIC TO AND FROM ALL FOREIGN COUNTRIES WHERE THE FOREIGN CORRESPONDENT IS COMMON TO BOTH CARRIERS
TRAFFIC FOR THE FIRST HALF OF 1947

Country	Foreign Correspondent	RCA Communications, Inc.			Mackay Radio & Telegraph Company		
		Outbound	Inbound	Total	Outbound	Inbound	Total
Bermuda.....	Cable and Wireless, Limited.....	35,165	139	35,304	29,558	64	29,622
China.....	Radio Administration Chinese National Government.....	4,124,642	1,808,665	5,933,307	2,227,576	1,313,502	3,541,078
Czecho Slovakia.....	Administration of Posts and Telegraphs.....	365,870	286,666	652,536	308,608	473,503	782,111
Egypt.....	Marconi Radio & Telegraph Company.....	774,041	821,471	1,595,512	467,893	644,858	1,112,751
Great Britain.....	Cable and Wireless, Limited.....	2,183,720	3,187,056	5,370,776	1,757,330	1,966,257	3,723,587
New Zealand.....	New Zealand Posts and Telegraph.....	197,032	21,779	218,811	132,871	65,294	198,165
Australia.....	Australian Government.....	1,088,575	822,260	1,910,835	661,007	464,354	1,125,361
India.....	Indian Government.....	2,774,541	2,600,140	5,374,681	907,845	930,830	1,838,675
Italy.....	Italcable.....	1,597,405	2,603,319	4,200,724	1,048,341	546,693	1,595,034
Japan.....	Supreme Commander for Allied Power.....	992,328	895,346	1,887,674	116,228	895,277	1,011,505
U. S. S. R.....	Government of U. S. S. R.....	2,237,695	1,587,518	3,825,213	1,938,185	1,506,901	3,445,086
	TOTAL.....	16,371,014	14,634,359	31,005,373	9,595,442	8,807,533	18,402,975
		Outbound			Inbound		
		Amount	Percent		Amount	Percent	
	Mackay Radio and Telegraph Company	9,595,442	36.9%		8,807,533	37.6%	
	RCA Communications, Inc.....	16,371,014	63.1%		14,634,359	62.4%	
	TOTAL.....	25,966,456	100.0%		23,441,892	100.0%	

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Exhibit 205.

(Opposite)



TELECOMMUNICATIONS
NETWORK OF
AMERICAN CABLE AND RADIO SYSTEM

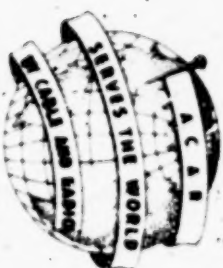
- LEGEND
- CABLE AND LANDLINES
 - - - RADIOTELEGRAPH CIRCUITS
 - - - RADIOTELEPHONE CIRCUITS
 - SHIP-TO-SHORE RADIOTELEGRAPH
 - ▲ RADIOTELEGRAPH CONNECTING COMPANIES IN THE IT&T SYSTEM
 - ⊙ SARA (SOCIEDAD ANÓNIMA RADIO ARGENTINA) AN AC&R SYSTEM CO.
 - - - COMMERCIAL PACIFIC CABLE CO.

4009

American Cable & Radio System

"Via Mackay Radio" "Via All America" "Via Commercial"

To Telephone a Message or
Call a Messenger
Whitehall 4-3100
OR ANY BRANCH OFFICE
SEE OTHER SIDE OF THIS FORM



An I.T.&T. Associate

Number _____
Time _____
MM _____
Check _____

SENDER MUST FILL IN ROUTING HERE

"Via" _____

TO ALL STOCKHOLDERS

THIS IS A REPRODUCTION OF OUR NEW TELEGRAPH BLANK
DESIGNED FOR USE FOR BOTH CABLE AND RADIO MESSAGES
DON'T FORGET TO ASK FOR IT!

AMERICAN CABLE & RADIO SYSTEM

SENDER'S NAME AND ADDRESS

FULL RATE MESSAGE UNLESS MARKED OTHERWISE. SEE OTHER SIDE FOR CLASSES OF SERVICE.

SEND THIS MESSAGE SUBJECT TO RULES AND REGULATIONS SET FORTH IN THE COMPANIES' TARIFF BOOK ON FILE WITH THE FEDERAL COMMUNICATIONS COMMISSION

4010

Exhibit 206.**[4023] FEDERAL COMMUNICATIONS COMMISSION**

Washington, D. C.

January 19, 1942

INTER-OFFICE MEMORANDUM**~~CONFIDENTIAL~~****FOR: Information****CLASSIFICATION CANCELLED****BY AUTHORITY OF WAYNE COY,
CHAIRMAN, F. C. C.**With concurrence of appropriate officials of former members of BWC
(State, Army, Navy, Coast Guard)**TO: The Commission****FROM: The Chairman****Sgd. WAYNE COY****Dated, May 12, 1948**

Admiral Noyes brought up the question of the desirability of always authorizing parallel circuits to be operated by two companies as a security measure. There was general agreement that this policy should be adopted and, where practicable, different locations should be used in the countries with which such parallel circuits are established. For example, it would be desirable to authorize one company to communicate with Sidney, Australia, and another with Melbourne; another situation might be to permit one company to communicate with Wellington and the other with Auckland, New Zealand. Also, Admiral Noyes suggested that this proposal apply generally so that parallel circuits will be available to the Netherlands East Indies and other countries in addition to those in the British Empire.

/s/ JAMES LAWRENCE FLY
James Lawrence Fly
Chairman

Exhibit 206.

[4024] FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C.

April 21, 1942

INTER-OFFICE MEMORANDUM

CLASSIFICATION CANCELLED

BY AUTHORITY OF WAYNE COY,
CHAIRMAN, F. C. C.

With concurrence of appropriate
officials of former members of
BWC

FOR: Information (State, Army, Navy, Coast Guard)
Sgd. WAYNE COY

Dated, May 12, 1948

TO: Commission

FROM: Chairman

SUBJECT: Policy of Defense Communications Board with
respect to furnishing equipment to foreign
administrations for direct communication with
the United States.

RECOMMENDED ACTION:

It frequently develops, in carrying on negotiations with regard to the establishment of direct communication, that the service can not be placed in operation unless the equipment for use at foreign terminals is supplied by the United States. In this connection, the following countries have indicated that additional radio equipment will be required to be supplied from the United States in order to establish direct radio circuits or to supplement existing equipment for adequate service:

*Exhibit 206.***Radiotelegraph**

New Zealand (Br)

Iran (Br)

Iraq (Br)

India (Br)

Turkey

Nigeria (Br)

Gambia (Br)

Gold Coast (Br)

Ecuador

Radiotelephone

China

Nigeria (Br)

Trinidad (Br)

Ecuador

New Zealand (Br)

It should be understood that there may be additional countries which will require certain radio equipment. However, definite information with respect to such countries is not available at this time.

In view of the priorities situation and difficulties with regard to transportation, the Defense Communications Board has adopted the following policy:

- (1) If parallel circuits can not be established due to lack of suitable equipment, every effort should then be made to utilize forked circuits so that two or more companies in the United States might communicate with points abroad, and
- (2) In cases where the United States is called upon to manufacture or supply equipment for use at foreign terminals, the request should not be granted unless there is a military need for the particular circuits under consideration.

/s/ James Lawrence Fly
Chairman

Exhibit 206.

[4025] FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C.

January 22, 1943

INTER-OFFICE MEMORANDUM

CLASSIFICATION CANCELLED

BY AUTHORITY OF WAYNE COY,
CHAIRMAN, F. C. C.

FOR: Information With concurrence of appropriate
 officials of former members of
 BWC

(State, Army, Navy, Coast Guard)

TO: Commission Sgd. WAYNE COY

Dated, May 12, 1948

FROM: Chairman

SUBJECT: Policy with respect to the establishment of new
 international and transoceanic radio circuits—
 action taken by the Board of War Communica-
 tions at its meeting on January 21, 1943.

RECOMMENDED ACTION:

This is with further reference to my memorandum to the Commissioners of January 14, 1943, regarding the action taken by the Board of War Communications with respect to a resolution presented by the Director of Naval Communications relative to the establishment of new international radio circuits. In this connection, the Board on January 21, 1943, disposed of this matter by taking the following action:

1. The Board on January 21, 1943, cancelled its policy of April 16, 1942, with respect to the establishment

Exhibit 206.

of parallel and forked circuits. This policy, which has been in effect until January 21, 1943, reads as follows:

"The Board reiterated its policy that parallel circuits be established to various points overseas, however, if facilities are not available for such parallel circuits, the Board was of the opinion that forked circuits should be opened with two or more communications companies in the United States. In cases where the United States is called upon to supply the necessary equipment for such use, the request should not be granted unless there is a military need for the circuit."

2. Effective immediately, the following shall be the policy of the Board with respect to the establishment of new international transoceanic circuits:

"RESOLVED, (a) That the Board of War Communications request the Federal Communications Commission hereafter to authorize no new commercial (common carrier) international radio circuit without the express approval of the Board;

"(b) That hereafter the Board will withhold its approval of any such new international circuit unless applications are accompanied by a complete statement of the availability of equipment and of the essential need for such circuit for the more effective prosecution of the war."

/s/ James Lawrence Fly
Chairman

Exhibit 206.

[4026] FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C.

April 10, 1943

INTER-OFFICE MEMORANDUM

CLASSIFICATION CANCELLED

BY AUTHORITY OF WAYNE COY,
CHAIRMAN, F. C. C.

FOR: Information With concurrence of appropriate
officials of former members of
BWC

TO: Commission (State, Army, Navy, Coast Guard)

FROM: Chairman Sgd. WAYNE COY

Dated, May 12, 1948

SUBJECT: Recommendations of the BWC to the FCC
regarding (1) direct Service to Accra, and (2)
temporary international authorizations.

RECOMMENDED ACTION:

The Board of War Communications recommends that:

(1) the FCC grant one of the applications now pending
for direct commercial radiotelegraph service between the
U. S. and Accra, Gold Coast.

(2) in the future, the Commission grant only temporary
licenses to American carriers which may be authorized to
establish new international circuits. It is further desired
that such authorizations be subject to revocation on short
notice, and that the license period of each grant be for not
more than one year.

James Lawrence Fly
Chairman

Exhibit 206.

[4027] FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C.

May 28, 1943.

INTER-OFFICE MEMORANDUM

For: Commission Agenda

CLASSIFICATION CANCELLED

BY AUTHORITY OF WAYNE COY,
Chairman, F.C.C.

With concurrence of appropriate
officials of former members of
BWC

(State, Army, Navy, Coast Guard)

To: The Commission Sgd. WAYNE COY

FROM: The Chairman

Dated, May 12, 1948

SUBJECT: Suggested procedure for processing applications
pursuant to BWC Order No. 29.

RECOMMENDED ACTION:

Under the provisions of BWC Order No. 29, no carrier
engaging in international wire or radio communication,
except as to circuits on the North American Continent, may
institute any negotiations or arrangements with any foreign
administration or organization regarding the establishment
of a new foreign point of communication unless such carrier
shall have given prior written notice to the Board of the
proposed institution of such negotiations or arrangements
and shall have received the Board's advice thereon.

Exhibit 206.

In this connection the Board of War Communications believes that a procedure should be announced to guide the carriers in making applications pursuant to its Order No. 29 and of the form in which the required advice of the Board will be given. Specifically, the Board recommends that the Commission and the Department of State join with the Board in adopting the following joint policy for the guidance of the U. S. carriers engaged in international communications:

It is anticipated that future grants authorizing the establishment of new foreign points of communication may permit the granting of only one application for each new point. Therefore, upon the receipt of notice advising the Board under the provisions of Order No. 29 of the proposed institution of negotiations for the establishment of a new foreign point of communication, the Board will first determine whether service with the proposed point is necessary and desirable.

If the Board decides that service should be established, the procedure for selecting the company and approving the institution of negotiations will be as follows:

- (a) A restricted letter will be sent to each U. S. carrier engaged in international radiotelegraph communication indicating that the Board has requested the Federal Communications Commission to authorize one American carrier to establish communication with such new point. The letter will also include the names of the companies which have filed notice of their desire to establish service.

[4028] (b) All other companies similarly interested in establishing communication with such point shall, within 10 days of the date of the Board's

Exhibit 206.

letter, file the notice required under Board Order No. 29.

- (c) At the expiration of the tenth day following the date of the Board's letter to the carriers, the Board will forward any notices received to the Federal Communications Commission and request the Commission to proceed with the view to authorizing one company to establish communication with the point in question. The Commission will notify the Department of State of its action.
- (d) The carrier selected by the Commission shall not begin negotiations with the foreign administration until it has received the written approval of the Department of State. This action of the Commission and the Department of State shall represent the advice of the Board within the meaning of paragraph 1 of Order No. 29.

If the Board should decide against the establishment of the proposed service, a letter to this effect will be sent to the carrier, and the Federal Communications Commission and Department of State advised of the Board's decision in the matter.

James Lawrence Fly
Chairman

Exhibit 206.

[4029] BOARD OF WAR COMMUNICATIONS

Washington, D. C.

C

O

For Information Only

P

4 May 1945

Y

~~CONFIDENTIAL~~

FOR: Information

To: Federal Communications Commission

FROM: Chairman, Board of War Communications

SUBJECT: Actions of the BWC

This is to advise the Commission that the Board of War Communications took the following action at its meeting on 3 May 1945:

3. The attached statement of policy for the Joint Chiefs of Staff with respect to the establishment or reestablishment of commercial communication channels between the United States and foreign countries was formally adopted by the Board on 3 May 1945. Copies have been transmitted to all American carriers engaged in international communication and also to the Office of War Information and the Office of Censorship.

s/ PAUL A. PORTER
Paul A. Porter
Chairman

Attachment

CLASSIFICATION CANCELLED

BY AUTHORITY OF WAYNE COY,
CHAIRMAN, F. C. C.,

With concurrence of appropriate
officials of former members of
BWC

(State, Army, Navy, Coast Guard)
Sgd. WAYNE COY
Dated, May 12, 1948

Exhibit 206.

[4030]

~~RESTRICTED~~

JOINT CHIEFS OF STAFF POLICY WITH RESPECT TO ESTABLISH-
MENT OR REESTABLISHMENT OF COMMERCIAL COMMUNI-
CATION CHANNELS BETWEEN THE UNITED STATES AND
FOREIGN COUNTRIES

1. Where military necessity requires the establishment of commercial communication channels between the United States and foreign countries, the Joint Chiefs of Staff will notify the Board of War Communications of the military requirements as to number of channels, character of service and equipment, time and place of shipment and operation, and will request the Board to initiate the necessary action for the establishment of the required facilities.

2. On request, the Joint Chiefs of Staff will likewise inform the Board of War Communications of such military objections as may exist to the establishment or reestablishment of commercial communication channels between the United States and foreign countries or to the negotiations therefor.

3. Where the military situation permits, the Joint Chiefs of Staff will have no objection to negotiations for the establishment or reestablishment by commercial companies of commercial communication channels between the United States and foreign countries, beyond the minimum required for military purposes, provided it is understood that such negotiations are conducted without military recommendation or participation.

4. Where the military situation permits, the Joint Chiefs of Staff will have no objection to the establishment or reestablishment by commercial companies of commercial communication channels between the United States and foreign countries, beyond the minimum required for military purposes, provided that such channels can be estab-

Exhibit 206.

lished with facilities and frequencies available to the commercial companies.

5. Neither the Joint Chiefs of Staff nor theater commanders will deal directly with commercial companies regarding the establishment or reestablishment of commercial communication channels between the United States and foreign countries or regarding negotiations therefor. The Joint Chiefs of Staff will inform the Board of War Communications of the military interests involved in accordance with the policy herein stated.

CLASSIFICATION CANCELLED

BY AUTHORITY OF SECRETARY,
JOINT CHIEFS OF STAFF

Dated, April 30, 1948

By WAYNE COY

Sgd WAYNE COY,
CHAIRMAN, F. C. C.

May 12, 1948

*Exhibit 206.***[4031] BOARD OF WAR COMMUNICATIONS**

Washington, D. C.

May 10, 1946

CLASSIFICATION CANCELLED

BY AUTHORITY OF WAYNE COY,
CHAIRMAN, F. C. C.

With concurrence of appropriate officials of former members of BWC

(State, Army, Navy, Coast Guard)

Sgd WAYNE COY—May 12, 1948

To: The Board of War Communications

FROM: Chairman, Board of War Communications

SUBJECT: Cancellation of policy of Joint Chiefs of Staff with respect to the establishment or reestablishment of commercial communication channels between the United States and foreign countries.

The Commission was advised on 16 March 1945 that the Board had approved the policy of the Joint Chiefs of Staff with respect to the establishment or reestablishment of commercial communication channels between the United States and foreign countries. A copy of the policy is attached to the memorandum of 16 March. In this connection, since the military situation no longer requires its continuation, the Joint Chiefs of Staff and the Board have rescinded this policy. However, before the licensing of any new use of a frequency, it is requested that the Federal Communications Commission effect the necessary co-ordination with the War and Navy Departments as heretofore.

s/ CHARLES R. DENNY
Charles R. Denny
Acting Chairman

Exhibit 207.

[4032]

MACKAY RADIO AND TELEGRAPH COMPANY
STATEMENT TO SHOW ESTIMATED FINANCIAL EFFECT OF OPENING
RADIOTELEGRAPH CIRCUITS WITH NETHERLANDS,
PORTUGAL AND SURINAM

<u>Particulars</u>	<u>NETHERLANDS</u>		<u>PORTUGAL</u>		<u>SURINAM</u>
	<u>If Direct</u>	<u>If via Tangiers</u>	<u>If Morse</u>	<u>If Printer</u>	
Estimated additional revenue on an annual basis— See Note 1.....	\$87,048.00	\$87,048.00	\$45,192.00	\$45,192.00	\$2,504.00
Deduct—Estimated additional expenses to be incurred as a result of opening new circuits:					
Radio operators (Note 2).....	\$ 6,366.00	\$ —	\$ 3,448.00	\$ 3,183.00	\$ —
Depreciation on equipment—					
Transmitter (Note 3).....	1,875.00	1,875.00	—	—	—
Receivers (Note 4).....	375.00	375.00	—	375.00	—
Operating room equipment (Note 4).....	350.00	350.00	—	350.00	—
Tube expense (Note 5).....	1,600.00	1,600.00	—	—	—
Power expense (Note 5).....	2,000.00	2,000.00	—	—	—
New tone channels from receiving station to operating room (Note 6).....	1,700.00	—	1,700.00	1,700.00	1,700.00
Control channel to Brentwood (Note 7).....	875.00	—	—	—	—
TOTAL.....	\$15,141.00	\$ 6,200.00	\$ 5,148.00	\$ 5,608.00	\$1,700.00
Estimated additional net revenue to Mackay as result of new circuit operations.....	<u>\$71,907.00</u>	<u>\$80,848.00</u>	<u>\$40,044.00</u>	<u>\$39,584.00</u>	<u>\$ 804.00</u>

543

The attached notes should be read in conjunction with this statement.

[4033]

AMERICAN CABLE & RADIO SYSTEM

STATEMENT TO SHOW ESTIMATED FINANCIAL EFFECT TO SYSTEM OF OPENING RADIOTELEGRAPH CIRCUITS WITH NETHERLANDS, PORTUGAL AND SURINAM

<u>Particulars</u>	<u>NETHERLANDS</u>		<u>PORTUGAL</u>		<u>SURINAM</u>
	<u>If Direct</u>	<u>If via Tangiers</u>	<u>If Morse</u>	<u>If Printer</u>	
Estimated additional revenue to AC&R System on an annual basis—See Note 8.....	\$18,024.00	\$18,024.00	\$43,124.00	\$43,124.00	\$1,897.00
Deduct—Estimated additional expenses to be incurred as a result of opening new circuits—Per Page No. 1 of this Exhibit.....	15,141.00	6,200.00	5,148.00	5,608.00	1,700.00
Estimated additional net revenue to AC&R System as result of new circuit operations—(Note 9).....	<u>\$ 2,883.00</u>	<u>\$11,824.00</u>	<u>\$37,976.00</u>	<u>\$37,516.00</u>	<u>\$ 197.00</u>

The attached notes should be read in conjunction with this statement.

Exhibit 207.

EXPLANATORY NOTES

[4034]

Note 1—The additional revenues shown on Page No. 1 of this Exhibit have been computed on the following bases:

Netherlands—

On outbound traffic it has been assumed that 50% of the CCC traffic volume in the last six months of 1947 will be carried on the MRT direct circuit.

On inbound traffic it has been assumed that Mackay will receive one message for every message sent to the Netherlands; and that CCC will retain its present inbound volume since it gets nothing but routed traffic.

No increment has been included with respect to probable increased volume outbound from the United States and its related increased inbound volume.

Portugal—

On outbound traffic it has been assumed that 25% of the CCC traffic volume originating in the United States in the last six months of 1947 will be carried on the MRT direct circuit (having estimated that 75% of CCC's traffic is specifically routed); all of the transiting traffic to Portugal to be carried on the direct circuit.

It has been further assumed that such outbound volume will be matched message for message on inbound.

With respect to traffic volume actually handled by Mackay in last six months of 1947, it has been estimated, based on the actual experience, that $\frac{2}{3}$'s of the outbound and all of the inbound resulted from the direct circuit opening and that with reopening the same experience will be realized.

No increment has been included with respect to probable further increased volume outbound from the United States or its related increased inbound volume.

Surinam—

On outbound traffic it has been assumed that all of the AC&R volume in the last six months of 1947 will be carried on the direct circuit.

It has been assumed that only 24 messages will be received inbound—this based on experience during the short period the circuit was in operation.

No increment has been included with respect to probable further increase in volume both outbound and inbound.

[4035]

Note 2—On the basis of information supplied by the operating superintendent, it is estimated that two additional Radio B operators will be needed for the Netherlands printer circuit direct from New York. No additional personnel will be required for operation with the Netherlands through Tangiers either at the New York or Tangiers operating rooms. If Portugal is on a Morse basis, one additional Radio A operator will be required; and if printer, one additional Operator B will be required.

Exhibit 207.

EXPLANATORY NOTES (Continued)

No additional operators will be required by the operation of the Surinam circuit. Pay levels shown are at the average pay scale for the category.

Note 3—Although it is anticipated that no new transmitter will be required to be purchased, there is shown with respect to the single circuit operation with the Netherlands the approximate annual depreciation of one transmitter (7½% of \$25,000). As the operations with Portugal and Surinam will be on a forked basis, transmitters already in operation will be used.

Note 4—Annual depreciation on receivers with respect to new printer operations are included in the additional expenses shown although it is not expected that any new purchases of receiver equipment will be necessary. No expenses with respect to Morse operation is indicated due to the fact that with the gradual change over to printer operation there becomes an excess of Morse receiver equipment.

Depreciation on printing equipment, operating tables and terminal equipment which is expected to be used in the central office is required only in connection with the new printer operations. Equipment already on hand is expected to be used for this purpose and no additional plant will be purchased.

Note 5—Additional tube and power expenses will be incurred only in connection with the transmitter on the Netherlands circuit. These amounts have been estimated on the basis of actual expenses incurred in the first nine months of 1947.

Note 6—No new tone channel will be required in connection with operations with Netherlands through Tangier as the existing facilities are already there.

Note 7—A control channel to the transmitting station at Brentwood will be required only in connection with a new direct circuit with the Netherlands as operations on all other circuits shown will be via existing facilities.

[4036]

Note 8—The estimated additional revenue shown on Page No. 2 of this Exhibit has been computed as follows:

	Netherlands	Portugal	Surinam
Estimated additional revenues to Mackay—per Page No. 1 of this Exhibit	\$87,048.00	\$45,192.00	\$2,504.00
Add (Deduct)—			
Estimated reduction in revenues to The Commercial Cable Company	(69,024.00)	(2,068.00)	—
Estimated reduction in revenues to All America Cables	—	—	(607.00)
Estimated additional revenues to AC&R System—per Page No. 2	<u>\$18,024.00</u>	<u>\$43,124.00</u>	<u>\$1,897.00</u>

Note 9—The amount shown as additional net revenue to the AC&R System as a result of new circuit operations does not include any possible reductions in expenses which may be realized by The Commercial Cable Company in its operations at New York, Azores, London and/or Rotterdam.

**Mackay Radio and Telegraph Co. Amendment to Its
Application by Changing Point of Communication
from The Hague to Amsterdam, The Netherlands.**

(Received June 24, 1948.)

[4040] MACKAY RADIO AND TELEGRAPH COMPANY, INC.

American Cable & Radio System

**All America Cables and Radio - Commercial Cables
Mackay Radio - Sociedad Anonima Radio Argentina**

**67 Broad Street.
New York 4, N. Y.**

June 23, 1948

**Mr. T. J. Slowie, Secretary
Federal Communications Commission
Washington 25, D. C.**

Dear Mr. Slowie:

We are enclosing herewith amendments, in duplicate, for the purpose of changing the point of communication from The Hague, Netherlands, to Amsterdam, The Netherlands, listed in application dated May 29, 1946 for modification of our Brentwood point-to-point radiotelegraph station license and renewal of special temporary authorization dated January 29, 1948.

This amendment is filed in accordance with a ruling made by Commissioner Jones in open hearing on June 8 granting Mackay Radio's petition for this change, and to complete your files in the matter.

Very truly yours,

**James A. Kennedy
Vice President and General Attorney**

Encs.

**Common Carrier Division
(Radio)**

Jun 25 1948

Engineering Department

*Mackay Radio and Telegraph Co. Amendment to its
Application, etc.*

**[4041] To THE FEDERAL COMMUNICATIONS
COMMISSION,**

WASHINGTON, D. C.

IN THE MATTER

of.

A telegraphic application for renewal
of Special Temporary Authoriza-
tion covering communication be-
tween The Hague, Netherlands, and
our Brentwood, N. Y. point-to-point
radiotelegraph station.

File No.
T1-RSA-657-1

Dated
January 29, 1948

Now comes the applicant, by its Vice President and
General Attorney, and amends its statements in the above
identified application as follows:

Change point of communication from The Hague, Neth-
erlands to read: Amsterdam, The Netherlands.

James A. Kennedy

JAMES A. KENNEDY,
Vice Pres. & Gen. Attorney

*Mackay Radio and Telegraph Co. Amendment to its
Application, etc.*

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss:

JAMES A. KENNEDY, being first duly sworn upon his oath deposes and says that he is the Vice President & General Attorney of the above named applicant and that the facts stated in the above-mentioned application and this amendment are true of his own knowledge, except as to such statements as are therein stated on information and belief, and as to such statements he believes them to be true.

JAMES A. KENNEDY,
Affiant

Subscribed and sworn to before }
me this 23rd day of June, 1948. }

ALMA PABST
Notary Public

ALMA PABST,
Notary Public, State of New York
Qualified in Queens County
Queens Co. Clk's No. 1932
Certificate filed in
N. Y. Co. Clk's No. 378
Commission Expires March 30, 1950

Decision of the Commission.

(Adopted February 21, 1951. Released February 23, 1951.)

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON 25, D. C.

IN THE MATTER

of

Mackay Radio and Telegraph Company, Inc. Applications for radio-telegraph circuits between the United States and Finland, Portugal, Surinam, and The Netherlands.

Docket
No. 8777.**Appearances**

JAMES A. KENNEDY, JOHN F. GIBBONS and JOHN A. HARTMAN, JR., on behalf of Mackay Radio and Telegraph Company, Inc.; GLEN McDANIELS, HOWARD R. HAWKINS, GUSTAV B. MARGRAF, and RICHARD W. CUTLER, on behalf of RCA Communications, Inc.; WILLIAM WENDT, on behalf of The Western Union Telegraph Company; and HAROLD J. COHEN, JACK WERNER and ASHER H. ENDE on behalf of the Federal Communications Commission.

Decision

By the Commission: Chairman Coy not participating; Commissioners Webster and Sterling dissenting.

Decision of the Commission.

HISTORY OF THE PROCEEDINGS

1. On February 8, 1947, Mackay Radio and Telegraph Company, Inc. (hereinafter called Mackay), filed an application with the Commission for modification of license to establish a direct radiotelegraph circuit with Helsinki, Finland, and on May 29, 1946, Mackay filed applications for modification of license to establish direct radiotelegraph circuits with The Hague, Netherlands; Lisbon, Portugal; and Paramaribo, Surinam. These applications, with others not here in issue, were designated for hearing in Docket No. 7974, *In the Matter of Radiotelegraph Service between the United States and Foreign and overseas points and assignment of frequencies for such service.* Mackay's application to communicate with Helsinki, Finland was dismissed without prejudice by the Commission on March 3, 1948, upon petition of Mackay filed on February 17, 1948; therefore, Mackay's application to communicate with Finland is not in issue in this case and will not be further considered herein.

2. Mackay filed an application on February 12, 1947, for special temporary authorization to communicate with The Hague, Netherlands,¹ pending a decision by the Commission in Docket No. 7974; and on February 13, 1947, it filed applications for special temporary authorizations to communicate with Lisbon, Portugal, and Paramaribo, Surinam, also pending a decision by the Commission in Docket No. 7974.

[4826] 3. On June 14, 1947, the Commission issued an order in which it recited that Mackay's applications for modification of its license to communicate with the countries named above had been designated for hearing in Docket

¹ Mackay's applications were amended at the hearing herein to substitute Amsterdam, Netherlands, for The Hague, Netherlands, pursuant to authority granted by the presiding officer on June 8, 1948.

Decision of the Commission.

No. 7974; that RCA Communications, Inc. (hereinafter called RCAC), was presently licensed to operate and was operating a direct radiotelegraph circuit between the United States and each of the countries named; that the questions presented by Mackay's applications for special temporary authorizations were included in the issues in Docket No. 7974 and denied Mackay's applications ~~for~~ special temporary authorizations.

4. On July 3, 1947, Mackay filed a petition, and on July 9, 1947, a supplementary letter, wherein it was requested that, pursuant to Sections 1.382 and 1.386 of the Commission's Rules, the Commission reconsider its above-described action of June 14, 1947, and grant Mackay's applications without hearing, or, in the alternative, afford Mackay an opportunity to be heard through oral argument in the matter. The Commission by its order dated July 11, 1947, directed that oral argument on Mackay's petition for reconsideration be heard and on October 7, 1947, such argument was heard by the Commission. Thereafter, on October 13, 1947, the Commission reversed its previous order and granted the applications for special temporary authorizations for a period of 90 days, subject to prior cancellation by the Commission at any time without advance notice or hearing and subject to such determination as might be made by the Commission in Docket No. 7974.

5. On November 4, 1947, RCAC filed a petition for reconsideration of the Commission's order of October 13, 1947, and requested that such order be reconsidered and set aside and that the Commission take appropriate action to revoke, pending a hearing, the authority of Mackay to communicate with the countries above named. On November 17, 1947, Mackay filed its opposition to the petition of RCAC. Thereafter, on December 10, 1947, Mackay filed an application for modification of license for authority to communicate with Amsterdam, Netherlands, via its relay

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station at Tangier and on January 29, 1948, Mackay filed a telegraphic application for renewal for a period of six months of the outstanding special temporary authorizations to communicate with the countries named.

6. Subsequently, on February 6, 1948, the Commission issued its order granting the petition filed by RCAC on November 4, 1947, for reconsideration of the Commission's order of October 13, 1947, and directed that the outstanding special temporary authorizations of Mackay to communicate with the countries named be cancelled and set aside effective February 12, 1948. It was further ordered that, pursuant to Section 309(a) of the Communications Act of 1934, as amended (hereinafter referred to as the Act) the foregoing applications of Mackay for modification of license (File Nos. 8047-MLHT-A and 10364-MHLT-B) insofar as they related to communication with the countries above named were withdrawn from Docket No. 7974 and, together with the applications of Mackay for renewal of the special temporary authorizations (File Nos. T1-RSA-657-1; T1-RSA-658-1; T1-RSA-659-1; T1-RSA-680-1) and the application of Mackay for modification of license (File No. 7619-C4-ML-C) to communicate with the Netherlands via its relay station at Tangier, be designated for hearing for reasons specified in the order. Mackay and RCAC were made parties respondent herein and leave was granted in the order to any other carrier engaged in foreign telegraph operations to intervene and participate in the proceedings.

[4827] Thereafter, on February 11, 1948, the Commission issued an order assigning Commissioner Robert F. Jones to preside at the hearing and directed that an initial decision in lieu of a Commission proposed decision be prepared by the presiding officer.

7. On February 17, 1948, Mackay filed a petition in which it requested that the Commission consolidate for hearing herein the applications of RCAC for re-

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newal of licenses to communicate with the countries named, together with the application of Press Wireless, Inc., for modification of license to communicate with Portugal and The Netherlands which were pending hearing in Docket No. 7974; that the Commission enlarge the issues in the proceeding herein in a manner appropriate to the request for consolidation; and that the Commission postpone the hearing for approximately one month. Thereafter, on February 20, 1948, The Western Union Telegraph Company (hereinafter called Western Union), intervened in the proceeding by filing a written notification of its intention to do so, in pursuance to the Commission's Order herein. On February 25, 1948, the Commission on its own motion postponed the hearing herein until further order in order to give it time to consider the questions raised by Mackay's petition of February 17, 1948. On March 25, 1948, the Commission denied Mackay's petition of February 17, 1948, for consolidation of applications and enlargement of issues, on the grounds that the issues set forth in the order instituting the proceeding were directed "primarily to the question of whether Mackay Radio and Telegraph Company should be authorized to communicate with the points in question, in addition to the existing circuits now authorized to and operated by, RCA Communications, Inc.;" and that "the broadening of the issues . . . would not conduce to the proper dispatch of business." At the same time the Commission ordered that the hearings herein should commence on April 26, 1948. Hearings were begun on that date and concluded on June 22, 1948. Proposed findings of fact and conclusions were filed with the Commission by Mackay, RCAC and Western Union on July 27, 1948. RCAC also filed a brief to accompany its proposed findings of fact and conclusions.

8. The initial decision herein, issued on July 29, 1949, looked toward a grant of Mackay's applications to communicate with Portugal and The Netherlands, and a denial

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of its applications to communicate with Surinam. Exceptions, accompanied by a brief and containing a request for oral argument, were filed by RCAC on September 8, 1949,¹ to so much of the initial decision as proposed a grant of Mackay's Portugal and The Netherlands applications. On the same date, Mackay filed exceptions to so much of the initial decision as proposed to deny its Surinam applications. Thereafter, on September 19, 1949, RCAC filed a reply to Mackay's exceptions, supporting the findings and conclusions in the initial decision with [4828] respect to Surinam. Western Union did not file any exceptions to the initial decision, but filed a notice of intention to appear and participate in the oral argument. Oral argument was held on December 16, 1949, and Mackay, RCAC, and Western Union participated therein.

THE PARTIES.

9. Mackay, the applicant and a respondent herein, is a part of the international cable and radiotelegraph system of the International Telephone and Telegraph Corporation (hereinafter called IT&T). The IT&T owns 58.17 per cent of the capital stock of the American Cable and Radio Corporation (hereinafter called AC&R). AC&R in turn owns 100 per cent of the capital stock of Mackay, 100 per cent of the capital stock of The Commercial Cable Company (hereinafter called Commercial) and 100 per cent of the capital stock of All America Cables and Radio, Inc. (hereinafter called All America). AC&R also owns 25 per cent of the capital stock of the Commercial Pacific Cable Company (hereinafter called Commercial Pacific) and 99.9 per cent of the capital stock of Sociedad Anonima Radio Argentina (hereinafter called SARA).

¹ The date for filing exceptions to the initial decision was extended to September 8, 1949, by order of the Commission dated August 12, 1949.

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10. *Mackay*¹ is a common carrier for hire of telegraph communications and was incorporated under the laws of Delaware on September 13, 1926, under the name of Commercial Wireless, Inc. It is engaged in international and in shore-ship (marine) radiotelegraph business. *Commercial* was incorporated under the laws of New York on December 10, 1883. It conducts trans-Atlantic cable service between the United States, Canada, Newfoundland, The Netherlands, The Azores, England, Irish Free State and France and provides service with other countries through connecting carriers. *All America* was incorporated under the laws of New York on January 31, 1881, under the name of Central and South American Telegraph Company. The corporate name was changed to All America Cables, Inc., on February 16, 1920, and All America Cables and Radio, Inc., on August 22, 1938. All America conducts cable service between the United States and countries in Central and South America and the West Indies. It also operates international radiotelephone and radiotelegraph service in Colombia and Peru. *Commercial Pacific* was incorporated on September 23, 1901, under the laws of New York and it conducts a trans-Pacific cable service between the United States, Hawaii, Midway Island, Guam, and the Philippines. *SARA* operates stations and offices in Argentina and Spain for international radiotelegraph service between Argentina and the United States, Europe, and other points in South America.

11. *IT&T* was organized under the laws of Maryland on June 16, 1920. It has control through stock ownership of a number of domestic and foreign companies whose activities include the operation, construction and management of internal and international communication systems by wire and radio and the manufacture and distribution of tele-

¹ For a more complete description of Mackay see the Commission's Report and Order dated May 11, 1950, in Docket No. 9093, *In the Matter of The American Cable and Radio Corporation, etc.*

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phone, telegraph, radio, and other electrical equipment and apparatus throughout the world. The communications activities of IT&T are carried on through AC&R and its subsidiaries and through a number of foreign subsidiaries. IT&T also engages in widespread manufacture and sales operations in many countries throughout the world which are carried on through Federal Telephone and Radio Corporation, a wholly owned subsidiary of IT&T; through International Standard [4829] Electric Corporation, a wholly owned subsidiary of Federal Telephone and Radio Corporation and its subsidiaries; and through Standard Elektricitäts Gesellschaft, A. G., and C. Lorenz, A. G., and their respective subsidiaries. These companies engage in the manufacture, sale, lease and installation of electrical apparatus and equipment related to the field of communications, including telephone and telegraph apparatus, telephone and power cable, commercial telephone and telegraph radio transmitting and receiving apparatus and direction finders and various other electrical products. The products manufactured and sold by these companies include apparatus used in international radiotelegraph and international cable operations. Customers of the companies include foreign agencies and companies engaged in international telegraph operations.

12. The balance sheet of Mackay as of December 31, 1947, showed that the value of its communication plant at gross book cost totaled \$7,031,990.11. The total current assets were \$4,316,252.40 and the total assets were \$10,012,452.56. Mackay's total current liabilities as of that date were \$1,412,928.60. As of the same date Mackay had a further liability to AC&R of \$4,334,084.64, representing an amount advanced by AC&R in connection with the financing of Mackay's plant modernization and expansion program which started in 1945 and with the financing of certain operating losses which Mackay had had in the previous two years. The consolidated balance sheet

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of AC&R as of that date showed current assets of \$15,101,096.71 and total assets of \$39,742,280.94. The current liabilities of AC&R were \$3,385,674.68. The IT&T, as of the same date reported total investments in, and receivables from, subsidiaries amounting to \$230,497,658.00 and assets totaling \$303,280,079.00.

13. *RCAC*, a respondent herein, is a wholly owned subsidiary of Radio Corporation of America. *RCAC* was incorporated on January 3, 1929, under the laws of Delaware and by an agreement dated March 22, 1929, Radio Corporation of America transferred to *RCAC* all of its property, equipment, station licenses, contracts and patent rights used in point-to-point radio communications together with the stock interest it held in other corporations engaged in such business. *RCAC* renders an international point-to-point radiotelegraph, program transmission and reception and radiophoto-service between the United States and various points throughout the world. Radio Corporation of America was incorporated under the laws of Delaware on October 17, 1919, for the purpose of acquiring the business and properties of Marconi Wireless Telegraph Co. of America, a British owned company, and of forming an American controlled corporation to develop the business of wireless communications between the United States and foreign countries and to develop and manufacture new inventions and radio apparatus. Directly and through subsidiaries it is engaged in research, development and manufacture of electronic equipment, international point-to-point communications services, ship-shore radiotelegraph services, radio broadcasting, including standard, FM, television and short wave broadcasting, and in the manufacture and sale of radio transmitting and receiving equipment, sound recording and reproducing devices and other industrial electronic equipment. Radio Corporation of America owns the capital stock of Radiomarine Corporation of America which operates the ship-shore services.

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[4830] 14. *Western Union*, an intervenor herein, was incorporated on April 8, 1851, under the laws of New York. It operates a nation-wide land wire telegraph system in the United States and, in addition, a system of submarine cables connecting North America with Europe and Latin America over which direct and indirect telegraph service is provided with points throughout the world.

HISTORY OF INTERNATIONAL RADIO
COMMUNICATION SERVICE

15. The commercial development of radiotelegraph began shortly after 1895 when Marconi Wireless Telegraph Co., Ltd. (a British company hereinafter called the British Marconi Company) was organized to engage commercially in radio communication. The organization of the British Marconi Company was followed in 1899 by organization of Marconi Wireless Telegraph Company, of America, an American company, which was under control of the British Marconi Company. Prior to the beginning of World War I, telegraph service between the United States and countries overseas was maintained largely by cable companies. Transoceanic radiocommunication was generally unsuccessful because of a lack of efficient transmitting and receiving equipment. Operations of radiotelegraph companies were confined primarily to ship-shore service extending over relatively short distances.

16. After the United States entered the war in 1917 the Navy Department assumed control of the operation of stations engaged in transoceanic communications. These included a German owned station in Sayville, Long Island, the station of Marconi Wireless Telegraph Company of America at New Brunswick, New Jersey, and a French owned station at Tuckerton, New Jersey. Under the war-time controls the Government succeeded in combining the patent and scientific resources of all electrical manufac-

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turers, with the result that new devices were developed which provided the means for satisfactory radio transmission and reception over long distances.

17. Prior to the organization of Radio Corporation of America, the British Marconi Company attempted to obtain exclusive rights to certain patents owned by General Electric Company but the Navy Department indicated its objection to the ownership of the patents by foreign interests. Radio Corporation of America was incorporated in 1919 for the purpose of developing the business of wireless communication in the United States and acquiring licenses and other rights under patents then owned by other interests. The assets in the United States of Marconi Wireless Telegraph Company of America were, as previously stated, purchased by Radio Corporation of America in 1919, and in 1920 the latter company began operating point-to-point stations which were turned over to it by the Navy Department.

18. In 1920 direct radiotelegraph circuits were established by Radio Corporation of America between the United States, on the one hand, and Great Britain, Hawaii, Japan, Norway, Germany and France, on the other hand. A circuit to Italy was established in 1921 and to Poland in 1923. By July 11, 1934, circuits had been established to 40 points which were now operated by RCAC instead of Radio Corporation of America. By 1936, 49 circuits had been established and by 1939, 52 circuits had been established. During World War II circuits to enemy or enemy- [4831] occupied territory were closed so that by 1943, 48 circuits were being operated. Since the war, circuits which had been closed have been reestablished so that at the time of the hearing herein RCAC had 65 circuits with points throughout the world.

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19. Mackay established its first transoceanic circuit in 1929 when circuits were opened with Hawaii and Peru. These were followed in 1930 with circuits to Argentina and The Philippines. Circuits were established by Mackay with Cuba, Austria, and Colombia in 1931; with Hungary in 1932; and with Vatican City, China, Denmark, Spain and Chile in 1933. As of July 11, 1934, Mackay had established circuits with 13 overseas countries. In addition, as of that date, Mackay had authorization for 5 additional circuits which were later opened. These were circuits to Japan, El Salvador, Haiti, Czechoslovakia and Brazil.

20. From the organization of this Commission in 1934 to the opening of World War II in 1939, applications filed for circuits to countries already served by other American radiotelegraph carriers were generally denied by the Commission. From the beginning of World II in 1939 until January, 1943 applications filed for new circuits were generally granted by the Commission, regardless of whether other circuits operated by other carriers already existed to the point concerned. In January 1942 the Defense Communications Board (later succeeded by the Board of War Communications), as a wartime measure, adopted a policy for the establishment of parallel circuits from the United States to overseas points to be operated by two United States companies. If possible, different locations were to be used in the country with which parallel circuits were established. In April 1942, the policy was amended to provide that if parallel circuits could not be established because of lack of suitable equipment every effort would be made to establish duplicate circuits so that two or more American companies might communicate with the same point abroad.

21. In January, 1943, the Board of War Communications abandoned the policy of establishment of parallel or duplicate circuits to foreign points and adopted a policy

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looking toward establishment of a circuit by a single American carrier to each new point. This policy was followed until May, 1945, when the Board of War Communications relaxed its restriction on the establishment of circuits.

22. During the period in which the policy of the Defense Communications Board for the establishment of parallel circuits was in effect, Mackay was granted special temporary authorizations without hearings to establish circuits with 41 countries with which it had not theretofore been authorized to communicate directly, and with 12 of these countries circuits were established by Mackay. These were Bermuda, India, New Zealand, Egypt, Great Britain, Australia, Bolivia, Uruguay, Paraguay, Puerto Rico, Afghanistan, and Spain. In addition, after the commencement of World War II in 1939, and prior to adoption of the policy for parallel circuits by the Defense Communications Board, Mackay was authorized by the Commission to establish circuits with five countries, and circuits were established with four of these countries; namely, Greenland, Italy, Eire, and Russia. As of the date of the hearing herein Mackay had authorization to communicate with 39 overseas points.

[4832] 23. Mackay introduced evidence into the record seeking to show that its growth and development had been stifled by contractual arrangements between RCAC and certain of the latter's foreign correspondents. It introduced the Amendment to Consent Decree in *U. S. v. Radio Corporation of America* in the District Court for the District of Delaware in 1935. By the terms of that Amendment, RCAC was enjoined from claiming or asserting that provisions in its contracts with foreign correspondents prohibited the foreign correspondents from establishing radio-telegraph circuits to or from the United States with any other carrier, or transmitting over circuits other than cir-

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cuits of RCAC, messages which might be specifically routed by the sender. In 1943, as a result of action by this Commission, RCAC waived any provision which it may have had in any of its contracts requiring the foreign correspondents to send unrouted traffic over circuits of RCAC. These contracts were considered by the Commission in the so-called *British Commonwealth Circuits Case*, Dockets Nos. 7094 and 7412,¹ in which the Commission stated in part as follows:

"Mackay may have encountered difficulties in negotiating for certain circuits as a result of the RCAC exclusive contracts. However, apart from such contracts, Mackay might not have been able to secure circuits to all, or any, of the points with which it wished to operate, because of the unwillingness of the foreign correspondent to operate with it, failure to obtain authorization from the United States licensing authority, or for other reasons. Accordingly, we have no way now of determining what effect, if any, the RCAC exclusive contracts had on Mackay's development, or on the amount of traffic handled by each carrier to the points involved here."²

"... Without in any way condoning any exclusive provisions which RCAC had in its contracts, the problem presented here is one of determining what grants of the circuits involved herein would best serve the public interest, convenience, and necessity, and in making such a determination we must consider the facts before us as to present day operations, and those reasonably to be expected in the future, and not as they might have been had certain factors been different."

¹ In the *Matter of Radiotelegraph Circuits between the United States and British Commonwealth and certain other points, etc.*, Report of the Commission issued on December 5, 1947.

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RADIO STATIONS OF MACKAY.

24. Mackay operates fixed public point-to-point radio stations in the vicinity of New York, New York; San Francisco, California; Honolulu, Hawaii; Manila, Philippine Islands; and Tangier, North Africa, and maintains offices at each of the points named, as well as at Washington, D. C.

25. Mackay's central operating terminal in New York is connected by means of very high frequency controlled circuits with its transmitting station at Brentwood (near New York) and with its receiving station at Southampton, Long Island. The Brentwood transmitting station, occupying an 1100 acre site, was acquired in 1934 when Mackay's former transmitting station at Sayville, Long Island, no longer was suitable for its expanding operations. At the time of the hearing herein Mackay had 32 transmitters installed at Brentwood, all but one of which had power ratings for telegraph operations ranging from 10 k. w. to 50 k. w. Two of these transmitters had been equipped with modulators for program, voice and radiophoto transmission and two modulators of greater output power were soon to be installed. Mackay also had under construction twelve 20 to 30 k. w. transmitters, six of which were to be installed at Brentwood. Associated with these transmitters were 50 high gain directional antennas for overseas communication, constructed for the most part as multiple horizontal arrays, with a few of these being of the horizontal "V" type. Mackay employs an engineering technique which permits a single antenna to be operated simultaneously from two or three transmitters using frequencies appropriately separated to make such operation possible.

26. The Mackay receiving station at Southampton occupies a site of approximately 125 acres. Mackay has 25 receiving antennas of the "inclined V" type having a gain in

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the forward direction of from 8 to 10 decibels with a front-to-back ratio of from 20 to 24 decibels in discriminating against controlled signals and interference. Associated with these antennas are 23-unit diversity receiving bays used for on-off keying, two 3-unit diversity receiving bays for program reception and 12 single receivers for miscellaneous use. In addition, Mackay maintains frequency measuring equipment to check the accuracy of the operation of its own transmitters and those of its foreign correspondents.

27. In 1945, Mackay, with the cooperation of the State and War Departments established a station on a 262 acre site in the international zone of Tangier, North Africa. This station was used at the time of the hearing essentially for communication between the United States and Afghanistan, Bulgaria, Ethiopia, India, Roumania, and U. S. S. R., and for relaying press communications handled on a multiple address or "presscast" basis to news agencies in India and other foreign points. At the time of the hearing, Mackay had 7 transmitters in Tangier, two having power output of from 2 to $2\frac{1}{2}$ k. w., and five with power output of 10 k. w. One of these transmitters is capable of transmitting 3 signals simultaneously. Mackay planned to install for its point-to-point operations at Tangier two 30 k. w. transmitters which were under construction and nearing completion at Mackay's Brentwood shops. Associated with Mackay's transmitter at Tangier are 12 antennas, 9 being of the "Rhombic" type and three being 2-bay arrays. For its receiving operations at [4834] Tangier, Mackay has erected 12 antennas, 5 of the "Rhombic" type and 7 of the "inclined V" type, which are associated with a total of 14 receivers, of which 6 are dual diversity receivers for frequency shift keying, 6 are diversity receivers for on-off keying and 2 are single receivers for monitoring and general uses.

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CONSOLIDATED OPERATIONS OF MACKAY,
ALL AMERICA AND COMMERCIAL

28. Mackay, All America and Commercial have been operated as a coordinated system since 1940 through the common parent company, AC&R. During the last few years there has been an increasing effort toward the consolidation of the operations of the three companies. Separate corporate entities are maintained, serving certain functions such as in obtaining foreign concessions and in maintaining pension plans. AC&R now regards itself as an integrated cable and radio system and insofar as possible operates as an integrated cable and radio system and from a management standpoint is concerned with the system as a whole rather than with the individual companies comprising the system. In explaining a certain loan by AC&R to Mackay, the comptroller for AC&R, Commercial, All America and Mackay stated:

"We are operating an integrated cable and radio system. We are three companies in a group, one company helping the other."

It is clear from the facts of record that at the time of the hearing herein there was no appreciable competition among these three companies for international telegraph traffic, or in rendering international telegraph service.

PRINCIPAL CONTENTIONS OF PARTIES

29. *Contentions of Applicant.* At the hearing herein, in its proposed findings, and at the oral argument, Mackay took the position that the fundamental issue in this proceeding is whether there should be competition in direct radiotelegraph service. It contended that the national policy in international communications favors competition; that a grant of its applications would strengthen telegraph

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competition in direct radiotelegraph service; that it was legally, technically, and financially qualified to provide the service at issue; and that a grant of its applications would serve the public interest. Mackay also contended that a grant of the applications would not require use of additional frequencies or the purchase of additional plant or equipment, and would entail negligible additional costs to it; that a grant of its applications would financially benefit Mackay and the AC&R System of which it is a part; that while such grant might reduce the traffic and revenues of its competitors, it would not endanger their ability to continue to render a competitive service between the United States and the points of issue. It further contended that the existence of excess capacity in telegraph facilities to each of the points at issue is a factor which must be weighed in the light of "the justification for such excess capacity, the cost, if any, of the proposed new operation, and other elements involved;" that with respect to Portugal and The Netherlands, the present and expected volumes of traffic are sufficient to justify the proposed direct circuits, and are in ~~excess~~ of those between the United States and many other countries to which competing direct radiotelegraph circuits are now [4835] authorized by the Commission. With respect to Surinam, Mackay admitted that existing traffic volumes are small, but urged that in view of other considerations, the proposed direct circuit was justified.

30. *Contentions of Other Parties.* RCAC and Western Union generally took the position that, in order to be granted authority to communicate with the points at issue, Mackay was required to show that a grant of its applications would result in some affirmative benefits to the public; that Mackay failed to show that such benefits would result; and that, therefore, its applications should be denied. It was argued that the law does not require, as contended by Mackay, that competition be extended into new areas, but merely that it should not be artificially stifled by con-

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tract. It was also contended that a grant of Mackay's applications would be contrary to the public interest because, without benefiting the public, such grants would result in the weakening of carriers now providing service, and thereby would harm the United States communications system as a whole. Finally, it was contended by RCAC that operation of the circuits at issue by Mackay, a part of the commonly owned AC&R cable and radio system, would substantially lessen existing competition between cables and radio; that this would result in a violation of Section 314 of the Communications Act; and that a grant of such applications would, therefore, be contrary to the public interest.

THE NETHERLANDS

31. Western Union operates 8 submarine cables between the United States and England. It leases a duplex channel in the so-called Anglo-Dutch cable between England and Amsterdam where it maintains an office and also leases wire lines from the British Post Office connecting its office in London with the Anglo-Dutch cable. Eastward from New York to Amsterdam the transmission is automatically relayed through London providing an electrically direct circuit. Westbound from Amsterdam to New York the traffic of Western Union is received at London on a reperforator and by action of the London operator in throwing a switch a telegraph channel from London to New York is immediately made available with the result that there is a direct connection from Amsterdam to New York. The capacity limitation on Western Union handling of traffic between the United States and The Netherlands is imposed by capacity of the leased circuits, approximately 620 letters a minute eastward and 490 letters westward. Western Union also has various alternate routes available for handling telegraph traffic between New York and The Netherlands; one via London through Paris and overland via

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Antwerp; another via Valencia, Eire to Paris, thence to Antwerp; another by transfer at London to the British Post Office which operates circuits to Amsterdam; and another by transfer at London to the British Post Office which also operates circuits via Brussels to Amsterdam.

32. Commercial operates 6 cables across the North Atlantic terminating at Commercial's automatic relay station at Waterville, Eire, from which point there are cable and landline connections to London through Weston, England, and cable and landline connections to Havre, Antwerp, Brussels and Frankfort. From London there are landline and cable connections to Rotterdam where Commercial maintains an office. Traffic between New York and The Netherlands may be handled between New York [4836] and London over any one of Commercial's 6 cable routes and between London and Rotterdam over direct landline and submarine cable circuits. There is a manual retransmission at London in respect of both eastbound and westbound traffic although Commercial did operate a fully automatic relay eastbound through London prewar and plans to re-establish that operation in the near future. Commercial leases the landlines between London and the coast and the submarine cable between the coast and Rotterdam.

33. RCAC operates a direct radiotelegraph circuit between New York and Amsterdam in conjunction with The Netherlands Administration of Posts, Telephones and Telegraph (hereinafter called The Netherlands Administration), which operates the international radio facilities of The Netherlands; this is the same correspondent with which Mackay proposes to deal. During the daytime for outbound traffic from the United States the RCAC circuit makes use of multiplex and terminal equipment embodying error-detecting features of Dutch design known as Telex-On-Multiplex. The multiplex equipment makes available 4 printer channels of communication in each direction with

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an estimated capacity of 60 words per minute per channel. Two of the channels are equipped with error-detecting terminal equipment. In addition, for both inbound and out-bound traffic RCAC maintains and operates a Morse circuit between the United States and Amsterdam.

34. With exception of pickup and delivery services performed by Western Union and Commercial at their offices in Amsterdam and Rotterdam, respectively, such services are performed in The Netherlands by The Netherlands Administration. There is also airmail and radiotelephone service between the United States and The Netherlands.

35. The record indicates that The Netherlands is a relatively important traffic center. The volume of traffic between the United States and The Netherlands and the revenues derived therefrom by the United States carriers increased from 10,165,108 words and \$883,406 revenue in 1937 to a prewar peak in 1939 of 13,591,612 words and \$1,091,970 revenue. In 1940, the volume and revenue declined to 7,494,509 words and \$497,766, respectively, and in 1941, to 1,207,339 words and \$35,783 revenue. During World War II, The Netherlands was occupied by enemy force so that there was no telegraph service between the United States and The Netherlands. In 1945, service was re-established and in that year 4,648,337 words were handled producing \$214,372 in revenue. In 1946, 10,611,869 words were handled producing \$550,184 in revenue and in 1947, 13,589,605 words producing \$750,837 in revenue. The competing radio and cable carriers serving The Netherlands have each obtained a substantial share of the industry volume and revenue from 1937 to 1947. During this period, of the total industry volume the cable carriers handled 40,292,421 words or 56.8 per cent, receiving \$3,212,156 in revenue and the radio carrier handled 30,731,792 words or 43.2 per cent, receiving \$1,647,482 in revenue. During the year 1947, Commercial handled 23 per cent of the traffic to;

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and 17 per cent of the traffic from The Netherlands; Western Union 47 per cent to and 30 per cent from The Netherlands; RCAC 30 per cent to, and 53 per cent from The Netherlands. Therefore, the cable carriers during 1947 handled approximately 70 per cent, RCAC 30 per cent of the traffic to The Netherlands, while the cable carriers [4837] handled approximately 47 per cent and RCAC 53 per cent from The Netherlands.¹ During the first 6 months of 1947, telegraph traffic between the United States and The Netherlands exceeded the traffic handled between the United States and each of the following 15 countries: Austria, Bermuda, Bulgaria, Chile, Colombia, Czechoslovakia, Dominican Republic, Egypt, Guatemala, Haiti, Japan, Panama, Puerto Rico, Spain and Yugoslavia. There are two competing radiotelegraph carriers authorized by the Commission to operate direct circuits with each of the 15 countries named. RCAC and Mackay compete by means of direct circuits to 11 of those countries. To seven of those countries, Bermuda, Bulgaria, Colombia, Czechoslovakia, Egypt, Japan and Yugoslavia, the United States radiotelegraph carriers are authorized to communicate with the same foreign government administration or government-controlled communications agency.²

¹ The following Table shows a comparison of the share of the inbound and outbound traffic handled by Commercial, Western Union, and RCAC in the prewar and postwar periods.

Year	SHARE OF TRAFFIC HANDLED BY Commercial		Western Union		RCAC	
	Out	In	Out	In	Out	In
1937	22.1%	16.2%	52.3%	38.3%	24.3%	45.5%
1938	24.6	17.8	52.1	34.9	22.1	47.3
1939	23.9	15.8	53.2	34.2	22.3	50.6
1945	42.9	1.9	36.6	9.6	47.0	66.7
1946	17.4	11.1	43.7	28.6	37.7	60.2
1947 (1st half)	22.6	17.2	47.5	31.3	29.8	51.5

² Although certain of the circuits herein were authorized by the Federal Radio Commission and other circuits were granted by this Commission during the war without hearing, it is to be noted that all such authorizations have since been renewed by the Commission.

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[4838] 36. Mackay proposes to offer the standard classifications of telegraph service between the United States and The Netherlands at the rates presently in effect by all carriers. Mackay states that it is prepared to provide radiophoto, program transmission and reception services if The Netherlands Administration is interested in these services. Mackay's arrangement with The Netherlands Administration with respect to the division of tolls will be the same as the arrangement between RCAC and The Netherlands Administration. The tolls will therefore be divided 50 per cent to the transmitting station and 50 per cent to the receiving station for traffic to and from the United States from and to The Netherlands, after deducting terminal charges and outpayments. The following statement shows the participation by Commercial and Mackay in the tolls per full rate word at the rates in effect at the time of hearing herein between New York, New York, and The Netherlands via the existing routes of Commercial and the proposed routes:

	Via Commercial	Via Mackay Direct	Via Mackay Tangier
Outbound	\$0.2505	\$0.20	\$0.20
Inbound	0.1505	0.10	0.10

At the time of the hearing Mackay's traffic to The Netherlands was normally routed via Commercial. On the outbound traffic the record indicates that Commercial and RCAC do not now share with The Netherlands Administration the 5 cents a full rate word increase authorized by this Commission on July 30, 1947, to supply carrier-revenue needs, nor the additional 5 cents a full rate word authorized on April 22, 1948, for the same purpose. It appears from the above table that the AC&R system will receive 5 cents a full rate word loss on traffic sent over Mackay's proposed

1 It should be noted, however, that at the time of the hearing herein, Mackay provided radiophoto service to only one point, Brazil.

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circuit than it now does on traffic sent over Commercial's circuit and that The Netherlands Administration will receive that much more. Mackay's proposed contract with The Netherlands Administration provides that The Netherlands Administration will transmit to Mackay a proportion of its westbound traffic equal to Mackay's proportion of the total eastbound radio traffic sent to The Netherlands by all radio carriers in the United States. In the eastbound direction the AC&R system proposes that all traffic specifically routed via Mackay and all traffic available to the AC&R system which is unrouted and destined to points in The Netherlands other than Rotterdam, will be handled over Mackay's proposed radio circuit. All traffic specifically routed via Commercial and all unrouted traffic destined to Rotterdam will continue to be handled over Commercial's facilities to Rotterdam. The proposed contract also contains a guarantee by Mackay that the volume of traffic transmitted by it over the circuit will not be less than 50 per cent of the total volume of traffic within the control of Mackay and Commercial. Mackay stated that it does not expect to have the guarantee invoked against it because AC&R will advise users in the United States to route traffic to points within The Netherlands other than Rotterdam, via Mackay's proposed radio circuit. However, if Mackay fails to secure enough traffic by this means, it would be necessary to divert some traffic routed via Commercial to Mackay, or to make other arrangements to compensate The Netherlands Administration financially.

[4839] 37. In the event The Netherlands Administration is willing to work by either the direct circuit or the circuit via Tangier, Mackay prefers the direct circuit as the normal route in order to avoid the relay at Tangier and the additional expense as a result thereof. If the Nether-

¹ Mackay has asked us herein to authorize it to communicate with The Netherlands via Tangier pending the establishment of a direct circuit with The Netherlands.

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lands Administration is not prepared to operate a direct circuit, Mackay would provide service via Tangier on a tape relay basis. Mackay's plans call for the operation of the circuits on a 24-hour per day basis. This method of operation would require Mackay in respect of its direct circuit to use a transmitter, receiver, and terminal printing equipment presently available in its reserve stock. These facilities were provided and arranged for when the temporary authorization to communicate with The Netherlands previously referred to herein was granted by the Commission and Mackay does not intend to replace any of them to its existing stock. Mackay will lease a new tone channel from its receiving station at Southampton to its operating room in New York and a new control channel from its operating room in New York to its Brentwood transmitting station. Mackay intends moreover to provide additional transmitters or facilities to improve operations, if such becomes necessary in order to furnish adequate service. Mackay proposes operation of the circuit with 5 unit printer equipment which is used over circuits with other countries with satisfactory results. The Netherlands Administration prefers the use of Telex-On-Multiplex operations now employed by RCAC over its circuit with The Netherlands. Mackay did not at the time of the hearing have this equipment but stated that, if appropriate arrangements at reasonable cost could be made with the holder of the patent rights, Mackay will be willing to use such equipment. The record indicates that The Netherlands Administration will work with Mackay with the 5 unit printer equipment notwithstanding the preference of The Netherlands Administration just mentioned. In the event Mackay provides service via Tangier, Mackay's existing facilities between New York and Tangier will be used for that part of the service. At the time of the hearing herein, Mackay operated one 5 unit printer circuit between New York and Tangier. This circuit is now in use in handling traffic to and from Tangier and in relaying traffic sent to and from

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certain countries such as Russia, Ethiopia, Afghanistan, Roumania, and Bulgaria. Mackay indicated at the hearing that it intended to multiplex this circuit before the end of 1948 thereby making 4 channels available in each direction.

38. Mackay proposes to establish a continuous independent circuit between its transmitting station at Brentwood and the station of The Netherlands Administration near Amsterdam which will not be forked with any other point of communication under normal operating conditions. For the operation of the circuit Mackay plans to use frequencies 18140 kc and 10240 kc which are presently authorized at Brentwood, New York. Frequency 18140 kc is also used by it for communication from the Philippines to San Francisco and frequency 10240 kc is used from San Francisco to the Philippines. Mackay believes that the use of such frequencies in the eastward direction from New York communicating with Amsterdam will not conflict with the [4840] use of them in Mackay's west coast operation and expects that such frequencies will be satisfactory for continuous operation of its proposed circuit between New York and Amsterdam during the present phase of the solar cycle. Other frequencies may be required from time to time to meet changing atmospheric conditions experienced at different times of the year and in such event, Mackay will use other presently assigned frequencies, including 6927.5 kc, by shifting of frequencies between circuits, a practice generally followed by radio carriers. Mackay does not believe that any additional frequency assignments will be needed and it is not requesting any additional frequencies to operate the proposed new circuit. RCAC contends that the use of frequencies 18140 kc and 10240 kc as proposed by Mackay may at certain periods cause an interruption of communications over one of Mackay's circuits thereby compelling Mackay to withdraw frequencies from other circuits or to request additional frequencies in order to serve Amsterdam adequately. Mackay states that it is

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ready and able to operate its proposed circuits on its presently assigned frequencies. There is some possibility, however, that Mackay may find it necessary to seek an additional frequency or frequencies in order to provide continuous service throughout the eleven year sunspot cycle. In respect of Mackay's proposed circuit via Tangier, frequencies not now authorized to Mackay must be made available for the transmission from Tangier to Amsterdam. The record indicates that there is a shortage of frequencies available for assignment at Tangier for communication to European countries. However, the record also indicates that the State Department had authorized the use by Mackay at Tangier of frequencies 17520 kc and 6840 on a provisional basis but withheld extension of this authorization until the Commission's decision in this case is made. Satisfactory tests on printer were made between Tangier and Amsterdam and later extended to New York with tape relay at Tangier just prior to the withdrawal by the Commission of Mackay's authorization hereinbefore mentioned. The record herein does not show that the speed of service proposed to be rendered by Mackay in transmission between New York and Amsterdam would be superior to that rendered by RCAC or by Western Union over their direct circuits but it does indicate that it would be better than that rendered by Commercial or by Mackay over any indirect circuit that it could use. When Commercial Cable re-establishes its fully automatic relay eastbound through London, Mackay's speed of service in handling traffic to The Netherlands would not appear to be superior to that which Commercial Cable could render over such automatic relay.

39. RCAC contended that Mackay's proposed service to The Netherlands would be inferior to the service presently available. However, as is set forth more fully below, under the view which we take of the applications herein, it is necessary for Mackay to demonstrate that it is capable

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of rendering adequate service to the Netherlands and it is not necessary for us to make a comparative evaluation of Mackay's proposed service and RCAC present service. In this connection, we find on the basis of the record herein that Mackay, which has been licensed to serve numerous points throughout the world, is capable of rendering adequate service to The Netherlands.

40. As hereinbefore indicated, under Mackay's proposed contract with The Netherlands Administration, all AC&R traffic would be sent over the Mackay circuit except traffic destined to Rotterdam and traffic destined outside Rotterdam specifically routed via Commercial. In August 1946, approximately 70 per cent of the [4841] AC&R eastbound traffic was destined to points outside Rotterdam. A witness for Mackay estimated that 50 per cent of Commercial's eastbound traffic to The Netherlands would be diverted to Mackay as a result of this contractual arrangement. In the event that there is not enough traffic for the Mackay circuit to make up an amount equal to 50 per cent of the total traffic within the control of Commercial and Mackay, which as previously indicated Mackay has guaranteed to deliver over the proposed circuit, Mackay would be obliged to persuade users to route their traffic via Mackay which might otherwise be handled by Commercial or possibly to make a payment to The Netherlands Administration to make up for the deficit. It appears, therefore, that a substantial amount of Commercial's traffic will be diverted to Mackay and to that extent would bring about the non-use of a competing cable company in the telegraph field. The record shows that this contractual arrangement between Mackay and The Netherlands Administration obligating The Netherlands Administration to transmit to Mackay a proportion of its westbound traffic equal to Mackay's proportion of total eastbound radio traffic sent to The Netherlands by all radio carriers in the United States would operate to give Mackay an advantage over RCAC, in

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securing inbound traffic from The Netherlands because the amount of return traffic which Mackay will receive will depend to a large extent upon the amount of cable traffic diverted from Commercial to Mackay. On the other hand, the operation of a circuit by Mackay will lessen the advantage which RCAC has heretofore enjoyed with respect to inbound traffic.

41. Mackay makes no allocation herein of existing operating costs for the proposed circuit, but proposes to operate this circuit with its present facilities except as noted below. If the proposed circuit is operated over the direct route Mackay's out-of-pocket annual expenses would be increased by \$15,141 for (a) two additional radio operators, (b) depreciation expenses on new transmitting, receiving and terminal equipment, (c) tube expenses, (d) power expenses, (e) new tone channels, and (f) control channels. If the circuit is operated via Tangier, Mackay's annual out-of-pocket expenses would be increased by \$6,200 for (a) depreciation expenses on transmitting, receiving and terminal equipment, (b) tube expenses, and (c) power expenses. RCAC contends that Mackay's annual expenses would exceed those indicated because more than two additional radio operators would be required; but Mackay contends that its existing staff could be used for general coverage of the circuit when the two additional radio operators were not available. It was estimated that Mackay would receive \$85,728 in additional revenue annually, that the Commercial Cable Company would receive \$69,024 less annually, leaving additional revenues accruing to the AC&R system annually of \$16,704. ¹This estimate is based on an assumption that 50 per cent of Commercial's traffic trans-

¹ The gain in revenues to the AC&R system from a grant of Mackay's Netherlands applications would result from the revenues derived from the inbound traffic which The Netherlands Administration would divert from RCAC to Mackay. On outbound traffic diverted from Commercial, Mackay and the American Communications System as a whole would receive a smaller share of the tolls (about \$19,900 per annum) than Commercial now receives.

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mitted to The Netherlands for the first 6 months of 1947 would be diverted by the AC&R system to the radio circuit of Mackay and on the further assumption that the outbound volume of Mackay would be matched message for message by traffic from The Netherlands. Deducting the estimated additional expenses to be incurred as a result of opening the proposed circuits of either over the direct route or over the route via Tangier, it appears that the AC&R system would benefit slightly if the direct circuit is operated and to a somewhat greater extent if the circuit via Tangier is operated.

[4842] 42. On the assumption that no duplicate Mackay circuit would be in operation, RCAC estimates that it would realize from service with The Netherlands for a six months period operating revenue of \$152,367 at a cost of \$111,146 for operating the circuit, resulting in net operating revenues of \$41,221. The cost for operating the circuit was arrived at by RCAC by computing its costs on a system-wide basis and allocating such costs to each of its circuits. With the proposed Mackay circuit in operation and estimated to take approximately 37 per cent outbound and 38 per cent inbound of the present business of RCAC away from it, the foregoing operating revenue of \$152,367 would be reduced to \$95,749, a revenue decrease of \$56,618.¹ The foregoing estimated percentages of diversion from RCAC to the proposed radio circuit were determined by reference to the actual participation of RCAC and Mackay during the first six months of 1947 in the radiotelegraph volume with the eleven countries of the world where Mackay and RCAC maintain circuits with the same foreign correspondents; namely, Bermuda, China, Czechoslovakia, Egypt, Great Britain, New Zealand, Australia, India, Italy, Japan and the U. S. S. R. However, we find that these estimates by RCAC

¹ The record shows that simultaneously RCAC's expenses applicable to this circuit would be reduced from \$111,146 to \$75,423, thus leaving it with net operating revenues of \$20,326, or a decrease of \$20,895 from the figure of \$41,221.

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are questionable because its executive vice president stated on the record that he believed that RCAC's service was so superior to that of Mackay's that RCAC would retain all of its present traffic over its circuits even if Mackay were granted circuits to the points under consideration. He indicated that the foregoing estimates were based on an assumption that a large proportion of such diversion would result from what he believed to be the intention of the AC&R system to take traffic away from its cable company and send it by its radio company, and that by so routing its traffic, get in return from the foreign terminal traffic which normally would be returned by RCAC.¹ He stated that it would be a conjecture as to whether the amount of outbound traffic handled by RCAC would be affected by the proposed circuit of Mackay. We are therefore unable to measure on the basis of the record, the net effect that Mackay's proposed circuits would have on the amount of traffic handled by RCAC and on its revenues derived therefrom, but we find that the diversion from RCAC would be substantially less than the 37 per cent or 38 per cent estimated by RCAC. It is conceded by Mackay that diversion of traffic from RCAC to Mackay will result in some loss of revenue to RCAC and some gain to Mackay, particularly with respect to inbound traffic. It is also possible that there may be some diversion from Western Union of its outbound traffic. However, the extent of such diversion cannot be specifically determined from the record herein.

[4843] 43. The Netherlands Administration has no proprietary interest in the operation of United States cable carriers and it received relatively little financial return from traffic handled by such cable carriers. Consequently, The Netherlands Administration is interested in developing traffic for its own radiotelegraph circuits from which it will

¹ It is to be noted that the inbound traffic which The Netherlands Administration would turn over to Mackay would be at the expense of RCAC which heretofore operated the only radiotelegraph circuit with The Netherlands.

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derive a greater share of the tolls. United States cable carriers, therefore, generally receive only that traffic from The Netherlands which is specifically routed over their lines by the sender. Such traffic cannot generally be secured except through solicitation. On the other hand, RCAC receives all traffic available to The Netherlands Administration and not otherwise routed by the sender. RCAC thus has the benefits of the solicitation carried on by The Netherlands authorities and of their appeal to users to patronize their national service. If Mackay's application were to be granted, it would share in the inbound traffic available to The Netherlands Administration on a basis that is proportionate to the traffic it handled outbound to The Netherlands.

44. Regarding the impact of the proposed new competition upon RCAC's operations as a whole, the record indicates that RCAC's situation competitively and financially would not be endangered as a result of the proposed competition from Mackay. During the period from 1936 to 1946 Mackay grew from 17 direct circuit points to 38 circuit points and the annual word volume it handled increased from 7,048,558 to 74,525,856 words. During the same years the RCAC word volume increased from 56,634,602 words in 1936 to 232,688,420 words in 1946.¹ Although the entry of Mackay into competition for traffic with The Netherlands would result in some diminution in traffic and revenue to RCAC, the record does not show that RCAC's operating position would be seriously impaired.

PORTUGAL

[4844] 45. No United States carrier operates in Portugal. *Western Union* maintains and operates two cables

¹ During all of these years RCAC had a substantial operating income. After the end of World War II, RCAC's operating income decreased sharply, but at the same time the other carriers showed proportionate decreases in operating income.

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to the Azores, one directly from New York and the other from Newfoundland where connection is made with cables from New York. Messages to Portugal are normally sent over these cables via the Azores through an automatic relay at that point and interconnections with facilities of Eastern Telegraph Company Ltd., a company controlled by Cable & Wireless, Ltd. (a British company hereinafter called C&W). Each message is preceded by printed signal which throws the subsequent messages into record translators in the Western Union office at Horta. There the tape is automatically fed into the Fayal-Carcavellos-Lisbon cable land-line of the C&W system for direct printing in the Lisbon office. Traffic from Portugal which is received at the Azores by Western Union arrives at that point over the C&W cable on Morse tape which is gummed down manually on a message blank and transferred through a window separating the adjacent Western Union and C&W offices. In forwarding the message the Western Union operator translates the Morse signals as he manually transmits the message to New York. Messages may also be sent over Western Union facilities to London hereinbefore described in connection with operations to The Netherlands and there transferred to facilities of C&W for transmission to Portugal directly or to Portugal via the Azores. Commercial owns and operates two cables to the Azores and in addition leases and operates two channels of a Western Union cable terminating at the Azores. The Commercial office in New York is connected directly with the Commercial office in the Azores by means of these cables. At the Azores messages for Portugal are transferred by manual relay to C&W for direct transmission to Portugal; the messages are received by Morse tape, gummed down on a message blank and transferred through a window to the adjoining C&W office where an operator translates the Morse signals as he manually prepares perforated Morse tape for onward transmission. Traffic from Portugal which C&W turns over to Commercial is handled in the same manner

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as traffic turned over by it to Western Union as above described. Messages may be handled over an alternate route by any one of Commercial's main cables to London hereinbefore described in connection with the operations to The Netherlands where they may be transferred to C&W for transmission by cable to Portugal. RCAC operates a direct radio circuit between the United States and Portugal. At present a high speed Morse channel is utilized on its circuit to Portugal. The circuit is open on a 24-hour basis. RCAC indicates that printer operation will be restored on the Portugal circuit as soon as the Portuguese correspondent, Companhia Portuguesa Radio Marconi (hereinafter called Portuguese Marconi), the same correspondent that Mackay proposes to deal with, is prepared to reestablish that method of operation. The capacity of the RCAC-Portugal circuit is 2,700 words an hour. The established hourly volume of traffic on the circuit between 6 a.m. and 6 p.m. based upon studies made during March and April of 1948, was 357 words outbound and 835 words inbound. Mackay handles a substantial volume of traffic with Portugal through a circuit which it operates via Lima, Peru. Operations at Lima are conducted by All America. The circuit was opened in 1947 after the closure of Mackay's direct radio circuit between New York and Portugal. At the present time the unrouted AC&R traffic to Portugal, is handled over this circuit. Prior to the opening of its service via Lima, Mackay handled traffic to Portugal via London. In addition to the above-described cable and radiotelegraph service, there is also airmail and radiotelephone service between the United States and Portugal.

[4845] 46. The annual volume of telegraph traffic between the United States and Portugal and the revenue derived therefrom rose from a total of 559,169 words and \$28,664 of revenue in 1938 to a high of 6,374,027 words and \$375,993 of revenue in 1941. Since that year both the traffic volume and revenue have generally decreased with the

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exception of the year 1944 when there was a slight increase of the word volume over the peak year of 1941 although not in the revenue for the traffic handled. In 1946 the volume declined to 5,603,498 words producing \$162,737 in revenue and in 1947 it further declined to 5,422,221 words producing \$172,321 in revenue. The competing radio and cable carriers serving Portugal have each obtained a substantial share of the total industry volume from 1936 through 1947. During this period the cable carriers handled 20,285,430 words or 45.3 percent and the radio carriers handled 24,599,080 words or 54.7 percent of the total industry volume. For the first six months of 1947 radio carriers handled 1,703,060 words or 65 percent and the cable carriers 904,900 words or 35 percent of the total industry volume. During the period preceding World War II Commercial handled approximately 35 to 38 percent and Western Union 37 to 39 percent, while RCAC generally handled less than 25 percent of the total industry volume between the United States and Portugal. RCAC increased its participation during the war period while the participation of Western Union and Commercial declined. During the first 6 months of 1947 both Western Union and Commercial increased their share of the total Portugal traffic, so that Western Union handled 28.8 percent and Commercial 5.9¹ percent of the total industry industry volume. To some extent at least, Commercial's relatively small share of both the total traffic exchanged with Portugal and the cable traffic inbound from that country is due to its failure to secure a larger share of the outbound traffic. This is so because the share of the inbound traffic turned over to it at the Azores depends on the proportion of the total outbound cable traffic it carries to the Azores for transfer and ultimate delivery in Portugal. On the other hand, it is to be noted that the share of inbound traffic made available to the cable companies has

¹In the first six months of 1947, Mackay handled 3.2% of the traffic exchanged with Portugal, bring the AC&R share during that period to 9.1%.

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decreased steadily.¹ During the first six months of 1947 the total telegraph traffic to and from Portugal was approximately equal to or was in [4846] excess of, the volume of traffic handled during the same period between the United States and each of the following countries, namely, Austria, Bermuda Bulgaria, Czechoslovakia, Dominican Republic, Guatemala, Haiti, Panama and Yugoslavia. Mackay and RCAC had been authorized to communicate with all these countries with the exception of Guatemala and Panama with which RCAC and Tropical Radio Telegraph Company had been authorized to communicate. In respect of Czechoslovakia, Mackay, RCAC and Press Wireless, Inc., had been authorized to communicate. In the case of Bermuda, Bulgaria, Czechoslovakia, Egypt and Yugoslavia, Mackay and RCAC were authorized to communicate with the same foreign government or government-controlled communication agency.²

47. Mackay proposes to operate with Portugal on its presently assigned frequencies; Mackay does not believe that any additional frequency assignments will be needed and Mackay is not requesting herein any additional frequencies to resume operations with Portugal. Mackay operated a circuit with Portugal on its presently assigned frequencies until its special temporary authorization was

¹ In this connection, the following table shows in comparison the share of inbound and outbound traffic handled by Commercial, Western Union and RCAC in prewar and postwar periods.

Year	Share of Traffic Handled By					
	Commercial		Western Union		RCAC	
	Out	In	Out	In	Out	In
1937.....	35.8%	39.9%	45.0%	28.4%	17.7%	31.7%
1938.....	37.1	40.8	48.2	27.8	12.8	31.4
1939.....	38.1	37.8	43.5	26.9	15.1	35.3
1945.....	8.2	5.4	20.6	19.9	67.3	74.7
1946.....	6.8	4.0	31.4	18.3	57.0	77.7
1947 (1st half).....	7.6	3.4	37.6	16.2	49.4	80.2

² Although certain of the grants referred to therein were made by the Federal Radio Commission prior to the creation of the Federal Communications Commission, or were initially issued by the Federal Communications Commission during the war, without hearing, the Commission has since made periodic renewals of such authorizations.

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canceled by the Commission as hereinbefore stated. Mackay proposes to use frequencies 15535 k.c. and 9290 k.c. In addition to its authorized use at Brentwood, frequency, 15535 k.c. is authorized to Mackay for communication in the westward direction from San Francisco. The use of such frequency at New York in the eastward direction did not conflict with, and Mackay believes that it will not conflict with, its use at San Francisco. Other frequencies may be required from time to time to meet changing seasons, but Mackay proposes to meet this situation by shifting frequencies between circuits to serve different atmospheric conditions experienced at different times of the year, a practice normally followed by radio carriers. The transmitting equipment for the proposed circuit is presently used for communication with Madrid, Spain and Mackay intends to add Lisbon, Portugal, as a point of communication by means of forked operations. The same transmitter will, therefore, be used for service to both Portugal and Spain. At Mackay's receiving station and at the central radio office in New York separate facilities will, however, be provided for reception from Portugal. Under this plan the signal transmitted by Mackay from New York would be capable of being received simultaneously at Lisbon and Madrid. The transmission of traffic intended for one point would be preceded by a signal calling in that point to receive the transmission that would follow. The practice of forking is generally followed by radio carriers in instances where in their judgment separate independent channels of communication are not warranted. Mackay refers to operations by RCAC on a forked basis from New York over its Morse circuit with Guatemala and Panama; Ecuador and Chile; Norway and Finland; Madrid and Barcelona, Spain; Poland and Syria; Egypt and Turkey; Czechoslovakia and Yugoslavia and Greece. Reference was also made by Mackay to printer circuits operated by RCAC on a forked basis with Germany and Austria; Haiti and Dominican Republic; and Surinam and Curacao. The [4847] operation of Mac-

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kay's circuit in the westward direction from Portugal will be similarly on a forked basis, Portuguese Marconi working with both Mackay and RCAC's receiving stations in the New York area, Mackay and RCAC each accepting the traffic addressed to it and rejecting the traffic addressed to the other, but both maintaining a watch on their respective ends of the circuit to receive traffic addressed to them. The record indicates that this method of communication inbound to the United States is followed in certain other instances. For the operation of the circuit eastward from New York Mackay will require no additional facilities since the circuit will be operated on a forked basis with Madrid and the frequencies and facilities for transmission to Madrid will serve for transmission to Lisbon. For operation of the circuit in the western direction to the United States, Mackay will also use existing facilities but will be required to restore the tone channel between Southampton and New York to deliver the Lisbon signal from the Southampton receiver to New York. One additional operator will be needed if Mackay's operation with Lisbon is resumed. Mackay states that it will use the same facilities that it used in operating the circuit with Portugal before its temporary authorization was canceled, that the facilities are available for resumption of the service, and that based upon experience during Mackay's previous operations, the facilities and frequencies thus utilized will be satisfactory for reliable service.

48. Mackay proposes to operate the circuit by Morse until changed over to printer. It operated the circuit by Morse until its temporary authorization to operate the circuit was canceled by the Commission. Before the Mackay circuit with Portugal was opened, Portuguese Marconi advised Mackay that it would operate at that time only on the ordinary Morse basis without frequency shift but that it expected in the future to printerize the circuit on a frequency shift basis. Since Mackay will operate with Lisbon

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on a forked basis with Madrid, it will be unable to operate by printer with Lisbon until the distant terminal of its Madrid circuit has been printerized and this Mackay in cooperation with SARA, its associated company in Madrid,¹ is prepared to do when Lisbon is ready for such operation. It is Mackay's plan to operate the circuit during the same hours that it operates with Madrid, namely, from 6 a.m. to 10 p.m., E. S. T. The bulk of radio traffic moves between New York and Lisbon during those hours as shown by RCAC's experiences, on March 3, 1948, when only 33 of 429 messages (7.7%) were handled during the other hours and on April 16, 1948, when only 33 of 406 messages (8.1%) were handled during the other hours.

49. RCAC contends that Mackay's proposed service would be inferior to that now available, would tend to degrade the existing service, and would place obstacles in the path of improving the New York-Lisbon service. As has been set forth in the case of The Netherlands, we find that under the view we take of the applications herein, it is not necessary for us to make a comparative evaluation of RCAC's present service and Mackay's proposed service in this proceeding. We find on the basis of the record herein that Mackay has demonstrated that it is capable of providing adequate service to Portugal. On the other hand, we consider that the effect that a grant of Mackay's applications might have on the speed and quality of the present service or on the opportunity to improve such service is relevant to our decision on Mackay's applications to serve Portugal. We, therefore, shall examine RCAC's contention with respect to the matter in some detail.

[4848] 50. RCAC's contention that a grant of Mackay applications to serve Portugal would degrade existing service to that country is based primarily on the fact that the circuit to Portugal would be a forked circuit. In this

¹ The matter of the printerization of the Madrid circuit will be discussed more fully below.

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connection, RCAC alleges "messages from Portugal to RCAC will have to be delayed whenever Portugal is transmitting to Mackay. In addition, RCA traffic to Portugal will have to be delayed while Mackay is transmitting to Portugal." With respect to traffic from Portugal, the record shows that Mackay and RCAC will both monitor all transmissions at all times that their respective circuits are operative; and that each company will receive a share of the inbound traffic that is proportionate to the share that its outbound traffic bears to the total outbound traffic to both companies. Thus, the Portuguese company will transmit messages as heretofore except that it will indicate by an appropriate prefix that certain of the messages are destined for RCAC and others are destined for Mackay. It does not appear that there will be any greater delay in the transmission of such messages from Portugal or in their receipt in the United States than there is at present. With respect to traffic outbound from the United States, it appears that if Portuguese Marconi were to assign only one operator to man the two receiving positions (i.e., the one over which Mackay's messages and the one over which RCAC messages are received from the United States), there is some possibility that the handling of the outbound messages of one of the two carriers might be delayed while the operator was transcribing the messages which were being transmitted simultaneously by the other carrier. The record does not contain sufficient evidence to indicate the nature and extent of the delays which might result from such operation. It appears, however, that this situation obtains whenever two United States carriers communicate with the same foreign administration which assigns only one operator to handle the traffic. Further regarding the matter of speed of service, the executive vice president of RCAC testified that he was reasonably sure that the foreign correspondents did not attach as much significance to the speed and quality of service as the United States carriers do. Under these cir-

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cumstances, we cannot find that a grant of Mackay's applications to serve Portugal would have an appreciable adverse effect on the service now available via RCAC.

51. RCAC also argues that since Mackay's proposed circuit to Portugal would be forked with Mackay's circuit to Spain, it would not be possible to introduce frequency shift printer operation with Portugal until such time as Mackay's Spanish correspondent was also prepared to install the necessary equipment to operate by this means. The record shows, however, that Mackay's correspondent in Spain is Sociedad Anonima Radio Argentina; that this company, like Mackay, is a subsidiary of AC&R; and that Mackay is prepared to provide the necessary equipment at the Madrid station of its associated company to permit the same type of operation. Under these circumstances, we cannot find that a grant of Mackay's applications would unduly delay the installation of frequency shift printer operation once Portuguese Marconi indicates its desire to make use of the equipment.

[4849] 52. If Mackay's application is granted herein, Mackay will offer the standard classifications of telegraph service at the rates presently in effect by all carriers. Mackay states that it will provide radiophoto service as soon as Portuguese Marconi is ready to commence such operations, and further, that it will also provide program transmission and reception service if demand should arise therefor.¹ The arrangements between Mackay and Portuguese Marconi provides that the radio tolls will be divided 50 percent to the transmitting and 50 percent to the receiving stations after deduction of terminal charges and outpayments. This arrangement as well as the arrangement for accounting and settlements will be the same as are applied to the circuit operated by RCAC with Portuguese

¹ As noted above, at the time of the Hearings herein, Mackay provided radiophoto service with only one country, Brazil.

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Marconi. The following statement shows the participation by Commercial and by Mackay in the tolls per full rate word at the rates in effect at the time of the hearing herein between New York, N. Y. and Portugal over existing routes and over the proposed direct radio route:

	Via Commercial	Via Mackay through Lima	Via Mackay direct
Outbound	\$0.083	\$0.063	\$0.063
Inbound175	.253	.253

It therefore appears that Mackay will receive the same amounts in the divisions of tolls over its direct circuit as it does over its circuit via Lima and that it will receive 2 cents a full rate word less on outbound traffic than Commercial receives, but on inbound traffic will receive 8 cents a full rate word more than Commercial receives. Under its arrangements with Portuguese Marconi, Mackay will transmit over the direct circuit all of the AC&R system's unrouted traffic to Portugal together with such traffic as may be specifically routed via Mackay. In the westbound direction Portuguese Marconi will transmit to Mackay a proportion of the westbound traffic available to Portuguese Marconi equal to Mackay's proportion of the total traffic transmitted eastward to Portuguese Marconi from the United States. It appears that whatever increase in revenues that will result to the AC&R System from a grant of Mackay's application will be due to the increased share of the inbound traffic which Mackay will receive, as its share of the revenue from outbound traffic would be less than that now realized by Commercial Cable. Therefore, any diversion of outbound traffic from Commercial to Mackay would result in a reduction in revenue to the AC&R system and the American communication industry. On the basis of data in the record, it appears this loss will approximate \$1,000 per annum.¹ It further appears that any increase

¹ Mackay estimated that Commercial's revenues would be reduced by about \$2,000 because of the diversion of its traffic to Mackay, while Mackay's share of the tolls on such traffic would be \$963.

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in inbound traffic that Mackay may receive from Portuguese Marconi will be at the expense of RCAC, which heretofore operated the only direct radio circuit with Portugal.

[4850] 53. Mackay makes no allocation herein of existing operating costs for the proposed circuit, but proposes to operate it with its present facilities, except as noted below. Mackay estimated that additional out of pocket expenses of \$5,148 would be incurred on an annual basis if the proposed circuit is operated by Morse to Portugal and \$5,608 if it were operated by printer. The \$5,148 is made up of \$3,448 for radio operators and \$1,700 for new tone channels from the receiving station to the operating room. The \$5,608 is made up of \$3,183 for radio operators, \$375 for depreciation on receivers, \$350 for depreciation on operating room equipment and \$1,700 for the new tone channels from the receiving station to the operating room. RCAC contends that the additional annual expenses to be incurred would exceed the amount of \$5,148 or the amount of \$5,608, as the case may be. Mackay estimates that the additional revenue which Mackay would derive from the proposed circuit to Portugal would be \$45,192 annually and that the reduction in revenues to Commercial because of a diversion of traffic from Commercial to Mackay would amount to \$2,068, leaving estimated additional annual revenues to the AC&R system of \$43,124. After deducting the \$5,148 or the \$5,608 for operation by Morse or by printer, as the case may be, there would be left to the AC&R system the amount of \$37,976 if the circuit is operated by Morse or \$37,516 if the circuit is operated by printer. The estimates for additional revenue were based on the assumption that (a) 25 percent of the Commercial traffic originating in the United States in the last 6 months of 1947 would be diverted by the AC&R system to the direct circuit of Mackay (having previously estimated that 75 percent of Commercial's traffic was specifically routed), (b) all of

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the AC&R system transiting traffic to Portugal would likewise be diverted to the Mackay circuit, and (c) with the reopening of the direct circuit Mackay would again realize its experience of the last 6 months of 1947 that two-thirds of the traffic forwarded to Portugal resulted from the opening of the direct circuit. It was further assumed that the outbound volume of Mackay thus created would be matched message for message with traffic from Portugal. RCAC admits that substantial additional revenue from the operation of a radio circuit by Mackay with Portugal would be realized by Mackay, but contends that the record fails to support the estimates of Mackay as reflecting what additional revenue may be expected. RCAC refers to the fact that upon closing of Mackay's direct circuit with Portugal on February 12, 1948, Mackay immediately instituted service with Portugal via the relay station at Lima, Peru, and points out that the testimony in the record on behalf of Mackay shows that (a) all AC&R system unrouted traffic to Portugal is transmitted over the circuit via Lima; (b) all traffic routed via Mackay is likewise handled via Lima; (c) the AC&R system received return traffic from Portugal via the Lima circuit; and (d) the same rates and division of tolls apply over the relay route as via the direct circuit. In this connection, RCAC also points out that no allowance was made for reduction in revenue to Commercial for handling traffic from Portugal, although the record shows that Commercial receives a return based on traffic transmitted to Portugal under contractual arrangements by Commercial and Western Union with C&W, whereby C&W distributes westbound cable traffic between Western Union and Commercial in proportion to the total amount of such traffic transmitted eastward by the two cable companies. While it appears from the foregoing that the [4851] additional net revenues, which Mackay and the AC&R system may expect to derive from the operation of its proposed circuit to Portugal, will be less than the above-cited estimate of \$37,976 or \$37,516 per year, the record does not

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indicate that Mackay and the AC&R system would derive additional net revenues.¹

54. Testimony on behalf of RCAC indicates that in the absence of a duplicate Mackay circuit RCAC would realize from service with Portugal for a 6-months' period operating revenue of \$93,589, at a cost of \$78,484 arrived at by the same method as that described above in respect of its circuits to The Netherlands, resulting in net operating revenues of \$15,105. On the same basis, but with the proposed Mackay circuit in operation and taking an estimated 31 per cent outbound and 37 per cent inbound of the present business of RCAC away from it, the foregoing operating revenue of \$93,589 would be reduced to \$58,105.² As was indicated above, however, in connection with the consideration of the record relating to the proposed circuit to The Netherlands we find that these estimates by RCAC are questionable because of the testimony of its executive vice president that he doubted whether any of RCAC's traffic would be diverted to Mackay. The record indicates that there would be some diversion from RCAC, particularly with respect to inbound traffic from Portugal, but we are unable to find from the record what the exact extent of diversion would be. As we noted above in the case of The Netherlands, the records indicate that RCAC's position in the industry, its financial status, and its ability to compete for international telegraph traffic would not be endangered by a grant of Mackay's Portugal application. No substantial diversion from Western Union is indicated in the record.

¹ As noted above, the gain in revenues that will accrue to Mackay and the AC&R system from a grant of Mackay's Portugal applications would result from revenues derived from inbound traffic.

² The record shows that simultaneously RCAC's expense applicable to this circuit would be reduced from \$78,484 to \$57,065, thus leaving it with net operating revenues of \$1,040 or a decrease of \$14,065 from the figure of \$15,105.

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55. The principal competitors for telegraph service with Portugal are Western Union, Commercial and RCAC. Mackay also competes through operation of its route via Lima, Peru. For the first half of 1947, the cable carriers handled 45.3 per cent of the outbound traffic to Portugal and RCAC 49.4 per cent. During the same period the cable carriers handled 19.6 per cent of the traffic inbound from Portugal and RCAC 80.2 per cent. The cable carriers, therefore, handled 34.7 per cent of the combined inbound and outbound traffic with Portugal and RCAC 62.1 per cent. In August 1942 Commercial entered into an arrangement with Western Union and C&W by which Commercial received a proportionate share of cable traffic from Portugal coming into possession of C&W. Prior to December 31, 1941, Commercial was permitted to solicit traffic in Portugal. From December 31, 1941, until August, 1942, when the arrangement with Western Union and C&W was made, Commercial was not permitted to solicit traffic in Portugal and C&W turned its traffic from Portugal over to Western Union at the Azores. The arrangement made in August, 1942, with Western Union and C&W placed Commercial on an equal basis with Western Union but Commercial has been unable to build its traffic with Portugal up to the level of Western Union traffic: [4852] Although Portuguese Marconi is 90 percent owned by C&W, Mackay contends that there is a strong trend in Portugal to radio. In respect of inbound traffic from Portugal, RCAC received from 31.4 to 35.3 percent of the total inbound wordage in the prewar years of 1937-1939 as compared with 80.2 percent for the first 6 six months of 1947 and in respect of outbound traffic RCAC handled 12.8 in 17.7 percent in the prewar years 1937-1939 as compared with 49.4 percent during the

³ Commercial Cable was approached by Italcable with a proposal that the two companies conclude an arrangement similar to the prewar agreement for the transfer of traffic to and from Portugal at the Azores. Italcable is permitted to solicit in Portugal. The record shows that Commercial Cable did not respond to these overtures.

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first 6 months of 1947.¹ It appears that RCAC has an advantage over the cable carriers because the cable carriers may not solicit for their routing in Portugal and handle only such traffic from Portugal as Cable and Wireless turns over to them at the Azores, whereas RCAC, which operates the only direct radiotelegraph circuit to the United States, receives the great bulk of the telegraph traffic which is in the control of Portuguese Marconi. It appears also that Mackay's proposed direct radio circuit would provide faster and more accurate service than that provided by cable via the Azores where manual relays are involved and faster and more accurate service than that provided by Mackay via Lima where manual relays are also involved. To the extent that Portuguese Marconi will turn over to Mackay a proportion of Marconi's westbound radio traffic equal to Mackay's proportion of eastbound traffic sent to Portugal by all radio carriers in the United States, Mackay will enjoy an advantage over RCAC. This is so because the amount of westbound traffic which Mackay receives will depend to some extent on the amount of eastbound cable traffic diverted from Commercial Cable to Mackay. On the other hand, the operation of a circuit by Mackay will lessen the advantage which RCAC has heretofore enjoyed with respect to inbound traffic.

SURINAM

56. No American carrier operates in Surinam. Communication service in Surinam is provided for by the Surinam Government through the Administration of Posts, Telegraphs and Telephones (hereinafter called the Surinam Administration).² *Western Union* owns and operates a

¹ Specific data with respect to the share of traffic handled by each major carrier serving Portugal in the prewar years (1937-1939) as compared with the period 1945-1947 (1st half) have been set forth above.

² As noted above in the case of The Netherlands and Portugal, there is also airmail and radiotelephone service between the United States and Surinam.

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cable from Miami Beach, Florida, to the Barbados and 3 cables from Key West, Florida to Havana, Cuba. The cable to the Barbados connects with a cable system affording direct service to Brazil, Argentina, Uruguay and points on the west coast of South America. The cables to Cuba provide direct automatic connection to Jamaica, Puerto Rico, Trinidad and other points in the West Indies and Caribbean area. The normal route for Western Union traffic to Surinam is over the cable from Miami to Havana. Each message to Surinam is preceded by a signal which automatically provides for a cutting in of a reperforator at Kingston, Jamaica. At Kingston the resultant reperforated tape feeds into a cable circuit from Kingston via Turks Island to the Barbados central office of the C&W system. At the Barbados central office the message is received on a reperforator and the tape is retransmitted to the Barbados wireless station of C&W where it is received on a recorder slip. There the message is repunched and transmitted by C&W by radio to Surinam. [4853] Western Union has available certain alternate routes, one being over the cable circuit of Western Union to London where the message may be transferred to the C&W system and sent by C&W over a direct radio circuit from London to Surinam and another route being from New York to London thence by cable to Pernambuco, Brazil, thence to the Barbados. Transfers on the last route just described are made by tape relay. Messages may be handled from the United States to Surinam over facilities of All America. Such messages are transmitted from New York over one of 3 cables to Fisherman's Point, Cuba, from which they are transmitted by automatic reperforated tape relay to San Juan, Puerto Rico, via a direct relay through Ciudad Trujillo, Dominican Republic. At San Juan the messages are transferred to C&W and C&W then transmits the messages to the Barbados where they are sent by C&W by its direct radio circuit to Surinam. All America has an alternate route providing for transfer to C&W at Santiago, Cuba,

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from which point messages may be forwarded to Surinam via the C&W radio station at the Barbados. The remaining communications route from the United States to Surinam is a direct radiotelegraph circuit operated by RCAC and the Surinam Administration between New York and Paramaribo, Surinam. The circuit is open from 6 a. m. to 8 p. m., E.S.T. During the hours that the circuit is opened for traffic, it is operated by printer on a continuous forked basis with Curacao.

57. There are no cable facilities connecting Surinam with exterior points. Operations by radio between the Barbados and Paramaribo are conducted on a scheduled basis every half hour during the hours from 5 a.m. to 9 p.m., E. S. T. with an added schedule at 9:45 p.m., E. S. T. The C&W office in San Juan where All America transfers its traffic to C&W closes at 8 p.m., E. S. T. On the basis of a study of traffic, other than night letters, transmitted south-bound by All America for further transmission from Puerto Rico to Surinam during the periods September 15 to 17, 1947, and November 3 to 17, 1947, the average elapsed time after transfer to C&W at San Juan and until received by radio at Paramaribo was 5.5 hours. With respect to traffic transferred to C&W at San Juan between the hours of 10 a.m. and 6 p.m., San Juan time, the average elapsed time was slightly in excess of 3 hours, the shortest elapsed time in respect of any message being one hour and 58 minutes on one full rate message.

58. Mackay proposes to operate the direct radiotelegraph circuit between New York and Paramaribo using the same frequencies which it used during the period from November 17, 1947 until January 2, 1948, when it operated a direct radiotelegraph circuit between those points pursuant to the special temporary authority hereinbefore mentioned. Using frequencies assigned as part of its general complement of frequencies authorized for its use at its

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Brentwood station Mackay conducted operations by forking Paramaribo with other places in the Caribbean area, such as Ciudad Trujillo, Dominican Republic; Port Au Prince, Haiti; San Salvador, Salvador; Havana, Cuba, and Paramaribo, Surinam. Northbound from Paramaribo, Mackay's circuit will not be forked with RCAC in New York, such as is proposed in respect of communications over its direct circuit from Portugal to the RCAC and Mackay stations in the New York area. During the daytime, Mackay operated from New York to the Caribbean area serving the points referred to, using frequencies 10480 k. c., 10830 k. c., 13960 k. c., and 21380 k. c. During the [4854] period referred to, Mackay states that it found that it communicated satisfactorily with Paramaribo, as well as the other points in that area. Other frequencies, Mackay states, may be required from time to time to meet changing seasons and Mackay proposes to shift other frequencies between circuits to meet difficult atmospheric conditions experienced at different times of the year, a practice normally followed by radio carriers. Mackay does not believe that any additional frequency assignments will be needed, and it is not requesting additional frequencies to resume operation of its proposed radio circuit between New York and Paramaribo. Mackay intends to operate the proposed circuit with Morse apparatus, although RCAC now operates its circuit to Surinam by printer operation as hereinbefore stated. At the time of the hearing herein the circuits of Mackay to the Caribbean area were operated on a call basis, which is to say that when traffic is to be sent, contact is established and the traffic is cleared. Although it is expected that these circuits to the Caribbean area will continue to be operated on a call basis, it is contemplated that Mackay's circuit with Surinam will be operated on a scheduled basis. This method of operation will permit traffic to be exchanged with Surinam only at certain

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scheduled periods during the day.¹ When Mackay's Surinam circuit was in operation, Mackay maintained schedules at 6 a.m., 8 a.m., 10 a.m., 2 p.m., and 6 p.m., E. S. T. Under such a schedule traffic filed with Mackay during periods when the circuit is not open would be held until the next schedule thereby causing certain delays in transmitting traffic. Moreover, delays would be encountered should Mackay's correspondents in the Caribbean area seek to establish service during the schedules with Surinam.

59. The volume of telegraph traffic between the United States and Surinam increased from 81,315 words producing \$8,128 revenue in 1940 to 330,647 words, producing \$31,157 in revenue in 1943. Since 1943 both the traffic volume and the revenue have declined except for the year 1947 when there was a slight increase in the traffic to 333,979 words producing only \$11,613 in revenue. Although the Surinam Administration sends inbound messages over the existing direct radio circuit of RCAC, the competing radio and cable carriers have each obtained a substantial share of the total industry volume from 1940 to 1947. In 1946 the cable carriers handled 51,600 words or 20 percent of the total industry volume and in the first 6 months of 1947 the cable carriers handled 40,172 words or 23.4 percent of the total volume. Prior to 1943, All America did not provide a telegraph service with Surinam but since that year the AC&R system has handled a substantial share of the total volume so that in 1946 the AC&R system handled 19,663 words or 7.6 percent and in the first 6 months of 1947, 24,661 words or 14.4 percent. In the last 6 months of 1947, the AC&R system handled 18,648 words or 11.5 percent. Western Union handled [4855] 33,804 words or 13.1 percent of the total volume in 1946 and 21,685 words or 12.6 percent in the

¹ RCAC also contended that Mackay's proposed service to Surinam would be inferior to RCAC's present service and that therefore its application should be denied. For the reasons set forth above in the case of The Netherlands and Portugal, we are not basing our decision herein on a comparative evaluation of Mackay's and RCAC's service.

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first 6 months of 1947. RCAC handled 204,227 words or 79.3 percent in 1946 and 125,396 words or 73 percent in the first 6 months of 1947.

60. Under Mackay's proposed contract with the Surinam Administration, Mackay will undertake to transmit to Surinam over the direct circuit all traffic available to the AC&R system. However, in the northbound direction from Surinam, Mackay under the proposed arrangements will handle only such traffic as it can induce telegraph users in Surinam specifically to route via the Mackay circuit. In order to obtain such northbound traffic, Mackay proposes to appoint an agent in Surinam to canvass for routed traffic. Mackay proposes to offer, as it did while operating its Surinam circuit for a brief period in 1947, the standard classifications of telegraph traffic at the rates which are presently in effect by all carriers. Mackay has requested the views of the Surinam Administration with respect to the desirability of handling program and radiophoto transmissions but the Surinam Administration has made no response to the inquiry. The record shows that RCAC offers program transmission service over its direct circuit with Surinam. The arrangements between Mackay and the Surinam Administration provided that the radio tolls will be divided ~~50 percent to the transmitting station and 50 percent to the receiving station~~ after deduction of terminal charges and outpayments. This provision with respect to the division of radio tolls as well as the provisions in the proposed contract in respect of accounting and settlements are the same as those applied to the circuit operated by RCAC. The following statement shows the participation by All America, by Western Union and by Mackay in the tolls per full rate word at the rates in effect at the time of the hearing herein between New York and Surinam over the existing routes and over the proposed direct radio route:

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	Via All America	Via Western Union	Via Mackay Direct
Outbound	\$0.07	\$0.155	\$0.17
Inbound	—	.075	.11

It therefore appears that the participation by Mackay in the tolls both in respect of outbound and inbound traffic would exceed the participation of All America and of Western Union.

61. Mackay makes no allocation of existing operating costs for this proposed circuit, but proposes to operate it with its present facilities except as noted below. Mackay makes certain estimates as to the additional revenue to be derived from the proposed circuit with Surinam based on the amount of traffic which it handled with Surinam from November 17, 1947, until January 2, 1948, the period during which it operated a direct circuit under the special temporary authorization hereinbefore mentioned. It estimates that it would receive additional revenue amounting to \$2,504 on an annual basis. All America transmits no traffic northbound from Surinam so that there would be no diversion of northbound traffic from All America to the Mackay circuit, but southbound to Surinam the AC&R system proposes to [4856] send all of its traffic over the Mackay circuit and it is estimated that All America would receive \$607 less in revenue per year. Deducting the \$607 from the \$2,504 just mentioned the AC&R system would receive an estimated additional revenue of \$1,897 on an annual basis. Deducting also \$1,700 for a new tone channel from Mackay's receiving station to its operating room in New York it is estimated that the net additional revenue accruing to Mackay on an annual basis would be reduced to \$804, a net increase to the AC&R system of \$197. Mackay intends to operate the circuit with facilities used during the period of direct operation with the exception of the new tone channel from its receiving station to its operating

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room above-mentioned. The transmitter to be used is presently used for Mackay's operations with its correspondents in the Caribbean area with which the Surinam circuit is to be forked. The receiving and terminal equipment to be used is available in stock and Mackay does not propose to replace that equipment for spare purposes and did not, therefore, charge depreciation against it. Mackay intends to conduct the operations with Surinam with its present staff, the circuit being handled through a so-called concentrator position in the Mackay operating room which permits the joining of a number of small volume circuits through the use of the concentrator board. Although the traffic available appears to be small and the revenue to be derived therefrom not to be large, Mackay contends that the proposed operation will be financially beneficial to the AC&R system. RCAC contends that the \$1,700 additional expense to be incurred annually for new tone channels by Mackay is not the only expense which Mackay would incur. If the proposed circuit is operated on a different basis from that described above certain additional expenses would be incurred for receivers. If the circuit were to be operated on a printer basis, additional expense for the installation and operation of printer equipment would also be incurred. RCAC points out that no allowance has been made for the cost of hiring solicitors in Surinam.

62. There may be some diversion of southbound traffic from Western Union to Mackay but the extent of diversion to be expected is not shown by the record. Western Union as well as All America receives no northbound traffic from Surinam. RCAC makes an estimate based on data for the first six months of 1947 from which it concludes that for that period it received operating revenue of \$7,705 at a cost of operating its circuit of \$10,634 arrived at by the same method as that described above in respect of its circuits to The Netherlands, resulting in a net operating loss of \$2,929. With the proposed Mackay circuit in operation and taking approximately 31 percent outbound and

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38 percent inbound of the present business handled by RCAC away from it, the foregoing operating revenue of \$7,705 would be reduced to \$5,013.¹ Although the estimate of 31 percent outbound and 38 percent inbound to be diverted from RCAC is questionable for reasons hereinbefore stated in respect of the proposed circuit with the Netherlands Administration, and for the further reason that Mackay will receive only routed traffic from Surinam, nevertheless, the record indicates that RCAC is operating the Surinam circuit at a loss and that this loss would be increased, if Mackay were authorized to establish a direct radio circuit with Surinam.

[4857] THE NETHERLANDS, PORTUGAL AND SURINAM.

Existing Facilities and Mackay's Proposed Facilities.

63.* It is clear from the foregoing, and it is admitted by all the parties hereto, that the capacity of existing telegraph communications facilities between the United States, on the one hand, and The Netherlands, Portugal, and Surinam, on the other hand, is in excess of that required to handle the present and expected volume of telegraph traffic under normal operating conditions. Each country is served directly by radio by RCAC and one, Portugal, is also served indirectly by Mackay and each is also served by cable either directly or indirectly by Western Union and by the AC&R system, as has been hereinabove set forth. Mackay argues, however, that United States carriers in creating facilities for their communication systems have not considered the existence of adequate capacity as a controlling factor. In addition, Mackay refers to the many instances where the record shows two or more radio carriers have been and are now authorized to operate directly with various countries

¹ The record shows that simultaneously RCAC's expenses applicable to this circuit would be reduced from \$10,634 to \$5,777, a decrease of \$4,857, thus leaving it with a net operating loss of \$3,764 or \$435 more than previously.

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throughout the world, often with the same foreign correspondents, and alleges that such authorizations were made without regard to the physical capacity available:

64. RCAC contends that Mackay's program for application of improved methods to international radiotelegraph operations is far behind that of RCAC. It refers to the program by RCAC and the alleged lack of a program by Mackay for the printerization of circuits, for the institution of tape relay systems, for the use of multiplex equipment, for frequency shift keying and for space diversity reception. However, under the view which we take of these applications, it is not necessary to determine whether Mackay's program for application of improved methods is behind that of RCAC.¹ The record shows that Mackay as well as RCAC has been licensed by the Commission to communicate with numerous points throughout the world and that Mackay as well as RCAC has been and is now engaged in a world-wide telegraph service. The record shows that Mackay is financially and technically qualified to provide service to the points at issue. In addition, Mackay's ability to render adequate telegraph service appears clear from the record herein.

[4858] 65. It does not appear that Mackay's proposed service to each of the points at issue will result in lower rates or speedier service, or will otherwise be superior to or more comprehensive than the service now available via RCAC. The record shows, however, that with respect to Portugal such service would be superior to that now provided either via Commercial-Azores route or the Mackay-Lima route and that with respect to Surinam Mackay service would be superior to that now provided by All America. With respect to the Netherlands, it appears that Mackay's proposed service would be superior to that now provided.

¹ Our views with respect to other matters are set forth fully in the subsequent sections of this decision.

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by Commercial. In this connection, we note that even if Commercial reinstates the direct eastbound circuit which it operated prior to World War II, Mackay's proposed circuit would still provide superior westbound service from The Netherlands as Commercial traffic in that direction would apparently still require manual rehandling in London.

66. *Present Competitive Situation.* The record shows that there is at present active competition¹ not only between cable carriers and between cable and radiotelegraph carriers serving the points at issue,² but also between such telegraph service provided by these carriers and the air-mail and the radiotelephone services. On the other hand, the record herein shows that the foreign administrations or companies operating in each of the three countries which Mackay seeks authority to serve herein are interested in developing their radio services since they retain a greater portion of the tolls on radio traffic than on cable traffic; that because of this fact, these foreign administrations favor the use of these radiotelegraph circuits for handling traffic out of these countries; and that RCAC, the only radiotelegraph carrier presently serving those countries directly, therefore, handles the great bulk of the traffic inbound from those countries to the United States.

67. *Effect of a Grant of Mackay's Application.* (a) *Competition.* The record shows that a grant of Mackay's applications herein cannot reasonably be expected to generate new telegraph traffic in any substantial degree, but rather that such grant would result in a redistribution of existing traffic volumes among the carriers serving the three points. On the other hand, we find on the basis of the data of record that a grant of Mackay's applications herein,

¹ Except that in the case of traffic inbound from Surinam where RCAC handles virtually all of the traffic.

² In the case of Portugal, there is also competition between radiotelegraph carriers, i. e., Mackay and RCAC.

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while resulting in some decrease in cable competition, will increase over-all competition for telegraph traffic generally, and will introduce more effective competition between radiotelegraph carriers serving the points involved.

68. (b) *Financial.* While it appears that a grant of Mackay's applications herein would result in somewhat increased operating expenses, the record shows that such grant would be financially beneficial to Mackay and the AC&R system of which it is a part. With respect to the effect on the [4859] other parties to the proceeding, the record shows that while a grant of Mackay's applications would result in a reduction in the traffic and revenues which would otherwise accrue to RCAC and Western Union, it does not appear that their expenses would be substantially reduced. In the case of Surinam, it further appears that a grant of Mackay's applications would increase the losses which RCAC suffered at the time of the hearing herein in the handling of traffic to and from this point. It is equally clear, however, from the data of record that a grant of Mackay's applications would not endanger the ability of RCAC or Western Union to continue to render competitive international telegraph service. When the over-all effect of a grant of the applications is considered, it appears that the added costs which might result on an industry-wide basis will be relatively small so that the impact on the rate structure as a whole should not be substantial.

VIOLATION OF SECTION 314

[4860] 69. We shall now turn our attention to the RCAC contentions that a grant of Mackay's applications would promote the competitive advantage of the AC&R system of which Mackay is a part; that such competitive advantage would substantially lessen competition between cables and radio for communication service to the points at

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issue herein, and would tend to create an AC&R cable-radio monopoly in telegraph business between the United States and foreign countries, all in violation of Section 314 of the Communications Act;¹ and that, therefore, a grant of the applications herein would be opposed to the public interest, convenience or necessity.

70. It should be noted that the Commission has recently considered the question of whether Section 314 is applicable to the AC&R system companies, and if so, whether these companies were in violation of that Section. By Order dated July 21, 1948, shortly after the hearings herein were concluded, the Commission instituted a formal investigation into this matter.² After holding public hearings and considering the record developed there at, as well as proposed findings, conclusions and briefs filed by the parties which participated in the proceedings in that matter,³ the Commission, by Order dated May 11, 1950, adopted the Report submitted by Commissioner Paul A. Walker, who presided at the hearings, as the Report of the Commission. In this Report the following conclusions were reached:

“(a) Section 314 was intended to preserve competition between cable and radio as two separate media of communication;

“(b) Section 314 is applicable to the respondents herein, [including AC&R, Mackay, Commercial and All America] just as it would be to any other commonly-owned, operated or controlled cable and radio system;

¹ Insofar as relevant hereto, Section 314 prohibits common ownership control and operation of international cable and radiotelegraph companies if “the purpose is and/or the effect thereof may be to substantially lessen competition or to restrain commerce between any place in . . . the United States . . . and any place in any foreign country, or unlawfully to create monopoly in any line of commerce.”

² *In the Matter of The American Cable and Radio Corporation, etc., Applicability of Section 314 of the Communications Act of 1934, as amended.* (Docket No. 9093)

³ RCAC intervened in the proceeding, participated in the hearings, and filed proposed findings of fact, conclusions of law, and a brief.

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"(c) The ownership, control and operation of cable and radio companies and facilities within the AC&R system do not constitute or result in a violation of Section 314 of the Communications Act of 1934, as amended."

[4861] 71. Since the proceedings in Docket No. 9093 were instituted subsequent to the close of the hearings herein, it is apparent that the Commission found in that proceeding that the operations of Mackay and the AC&R System, as they were being carried on at the time the record herein was closed were not in violation of Section 314 of the Act. RCAC contends in its exceptions, however, that the instant proceedings involve "applications to communicate with three new points" while the "proceedings in Docket No. 9093 do not involve new circuits, but relate to the appropriate action in respect of the existing consolidated cable-radio operations of AC&R in general and Mackay, Commercial and All America in particular." RCAC then argues that it is the Commission's obligation "to apply the law to the facts which have been developed in this proceeding." Accordingly, we shall review the data of record herein to determine whether a grant of Mackay's applications would result in a violation of Section 314.

72. The record herein shows that Mackay is a wholly owned subsidiary of AC&R which also owns all of the stock of Commercial and All America; that these three companies are operated as an integrated cable and radio system; and that there is no substantial or effective competition among the companies for traffic. There is no doubt that if Mackay's applications herein were to be granted a substantial portion of the traffic now handled by Commercial to

¹ In this connection, it should be noted that the Commission found in its decision in Docket No. 9093 "... we have concluded that Section 314 is applicable to respondents, so that, of course, there remains the possibility of a violation by them on the basis of facts and circumstances not now found to be present."

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Portugal and The Netherlands as well as virtually all of the traffic handled by All America to Surinam would be diverted to Mackay. The question is thus raised as to whether such actions by a commonly owned cable and radio system would result in a violation of Section 314. In order properly to decide the question, we will consider the basic purpose of Section 314, the applicability of that section and the interpretation which Congress intended should be given to its provisions.

73. A review of the legislative history of Section 314 of the Communications Act indicates that it is substantially identical with Section 17 of the Radio Act of 1927;¹ and that the Congress in enacting these Sections² sought to achieve two major results. These were (a) to assure that radio, a relatively new medium of [4862] communication at the time these statutes were enacted should be permitted to develop fully and freely without interference from the older well entrenched cable medium; and (b) to assure that there would be competition between cable and radio as two separate and distinct means of international communication. It is also clear from the aforementioned legislative history that Section 314 is applicable to Mackay and to the AC&R system of which it is a part just as it would be to any commonly owned cable and radio system.

74. The record herein indicates that Mackay has been part of a combined cable radio system since it first opened its transoceanic radiotelegraph circuit in 1929 under license

¹ H. Rept. No. 1918, 73rd Cong. 2d Sess. (June 4, 1934) accompanying the conference report on the Communications Act states at page 47, "Section . . . 313, 314, . . . are, respectively substantially identical with the following section of the Radio Act of 1927: . . . 15, 17, . . ."

² See H. Rept. No. 719, 68th Cong. 1st Sess., p. 5 (1924), Hearings before the Committee in the Merchant Marine and Fisheries, House of Representatives, on H. R. 5589, 69th Cong., 1st Sess., p. 31 (1926); Statements of Representative Wallace White of Maine (later Senator) one of the floor managers of the Bill which became the Radio Act of 1927 at 67 Cong. Rec. 5480, (1926), and 68 Cong. Rec. 2579 (1927); Hearings before Senate-Committee on Interstate Commerce on S. 6, 71st Cong., 1st and 2nd Sess., p. 1669 (1929-1930).

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authority granted by the Federal Radio Commission.¹ It also appears from a review of the hearings of the various bills relating to communications which the Congressional Committees considered between 1927 and 1934,² that the members of these Committees were aware of the common ownership and coordinated operations of Mackay, Commercial and All America. The record also shows that this Commission has authorized Mackay to operate an increasing number of circuits and has also approved various interlocking directorates in the AC&R system. While none of these considerations would afford protection to the applicants herein if a grant of the circuits at issue would in fact result in a violation of Section 314, they are relevant to an evaluation of the evidence herein.

75. The pertinent question before us is, therefore, whether the record, when viewed in the light of the above factors, indicates that a grant of Mackay's applications would result in a substantial reduction of competition between cable and radio for traffic to the points at issue, or whether such grant would tend to create a monopoly in international telegraph communications. This can be determined from an evaluation of the data of record with respect to the share of the traffic each of the carriers serving Portugal, Surinam and The Netherlands were handling at the time the hearings herein were held, as well as from an evaluation of testimony with respect to the effect that a grant of these applications would have on the AC&R System and the other carriers serving these points.

¹ The Federal Radio Commission operated under the authority of the Radio Act of 1927 and issued licenses in accordance with the provisions thereof. Included among such provisions was Section 17 which is substantially identical with Section 314 of the Communications Act.

² See Hearings before the Senate Committee on Interstate Commerce on S. 6, 71st Cong., 1st and 2nd Sess. (1929-1930); Hearings before the Senate Committee on Interstate Commerce on H. R. 7716, 72nd Cong., 1st Sess. (1932); and Hearing before the Senate Committee on Interstate Commerce on S. 2910, 73rd Cong., 2nd Sess. (1934); and Hearings before the House Committee on Interstate and Foreign Commerce on H. R. 8301, 73rd Cong., 2nd Sess. (1934).

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[4863] 76. The following Tables which have been prepared on the basis of the data of record compare the share of each of the carriers serving Portugal, Surinam and The Netherlands in the outbound, inbound and total traffic exchanged with each of these countries in 1947, the latest year for which data is available in the record.

Share of Traffic Handled in 1947 by:

Country	RCAC	Western Union	AC&R Companies		
			Cable Co.	Mackay	Combined
OUTBOUND					
Portugal	51.4%	36.3%	6.5%	5.8%	12.3%
Netherlands ...	29.8%	47.4%	22.7%	0.1%	22.8%
Surinam	50.4%	23.6%	18.8%	7.2%	26.0%
INBOUND					
Portugal	80.7%	13.9%	2.5%	2.9%	5.4%
Netherlands ...	52.8%	29.8%	17.3%	0.1%	17.4%
Surinam	99.9			0.1%	0.1%
TOTAL					
Portugal	63.5%	27.0%	4.9%	4.6%	9.5%
Netherlands ...	40.5%	39.2%	20.2%	0.1%	20.3%
Surinam	75.3%	11.7%	9.4%	3.6	13.0%

77. It appears from the foregoing Tables that there is substantial over-all competition between telegraph carriers for traffic to and from each of the points at issue herein, as well as competition between cable carriers and radiotelegraph carriers, except in the case of traffic inbound from Surinam, which is handled almost exclusively by RCAC. More specifically, with respect to The Netherlands, the record shows that at present there is competition between cable carriers, Western Union and Commercial, between cable carrier Western Union and radiotelegraph carrier RCAC and between cable carrier Commercial and radio-

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telegraph carrier RCAC. If Mackay's application to serve The Netherlands is granted then there would be competition between it and Western Union, between it and RCAC, and between Western Union and RCAC. In addition, Commercial would also remain in the field, handling a fairly substantial volume of traffic¹ and would provide competition to both Western Union and RCAC. With respect to Portugal, there is at present competition between cable carriers, Western Union and Commercial, between cable carrier Western Union and radiotelegraph carrier RCAC and between cable carrier Commercial and radiotelegraph carrier RCAC. [4864] To the extent that Mackay now handles traffic to Portugal via Lima, it also competes with both Western Union and RCAC. If Mackay's application to serve Portugal is granted, there would be competition between it and Western Union, between it and RCAC and between Western Union and RCAC. The record also shows that even if Mackay's application to serve Portugal is granted Commercial will continue to handle considerable amounts of traffic² which are routed via its facilities and to that extent provide competition to both Western Union and RCAC. With respect to Surinam, the record shows there is at present competition for outbound traffic between Western Union and All America, between Western Union and RCAC and between All America and RCAC. If Mackay's application is granted there would be competition between it and Western Union, between it and RCAC and between Western Union and RCAC.

78. The record shows that a grant of Mackay's application herein would result in the diversion of outbound traffic now handled by the AC&R cable companies to the points herein; that the extent of the diversion from these

¹ On the basis of the record herein, it appears that Commercial would handle about $\frac{1}{2}$ of its present share of the outbound traffic or about 11 per cent of the total traffic outbound to The Netherlands.

² It is estimated that about 75 per cent of Commercial's present traffic volume is specifically routed and would continue to be handled over its facilities.

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companies would vary depending on the point involved from about 25 per cent in the case of Portugal, and 50 per cent in the case of The Netherlands to virtually all of the traffic in the case of Surinam; we have found that a grant of Mackay's applications would result in the diversion of some outbound traffic from both RCAC and Western Union; that it is not possible to measure the exact amount of such diversion from the data of record; that in the case of Western Union the diversion would be relatively small and that in the case of RCAC it would be substantially less than the 37 per cent estimated by that Company. With respect to cable versus radio competition for traffic to the three points the record shows that in 1947 Western Union handled 23.6 per cent of the traffic outbound to Surinam, 36.3 per cent of such traffic to Portugal and 47.4 per cent of such traffic to The Netherlands, and that in addition Commercial will continue to handle some traffic to Portugal and substantial amounts of traffic to The Netherlands. With respect to over-all competition for traffic to those points the record shows that in 1947 the AC&R companies handled between 12.3 per cent and 26 per cent of the outbound traffic while Western Union and RCAC handled between 74 per cent and 87.7 per cent of such traffic. Under these circumstances, and even after due allowance is made for the various estimates of the extent to which a grant of Mackay's applications might result in diversion of traffic to that company, it is clear that if that company's applications are granted there will still be substantial competition between cable and radiotelegraph carriers for traffic to each of the three points and that the AC&R system would not have a monopoly of the traffic to any of these points.

79. With respect to the question of monopoly in international communications, generally, we have found that a grant of Mackay's applications would not endanger the ability of RCAC and Western Union to continue to provide competitive international service. In this connection, we

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note that in the first half of 1947 RCAC handled 31.7 per cent of the total international telegraph traffic between the United States and foreign and overseas points; that Western Union handled 28.2 per [4865] cent of such traffic and that the three AC&R Companies combined handled 31.6 per cent of such traffic. In 1936, RCAC handled 20.6 per cent of such traffic, Western Union 34.9 per cent and the three AC&R Companies 32.2 per cent. It thus appears that, in the first half of 1947, the AC&R Companies actually handled a somewhat smaller share of the total traffic than in 1936, while in 1947, RCAC's share of the traffic was considerably greater than in 1936, and that this occurred despite the fact that in the intervening years Mackay had been granted numerous duplicating circuits (such as England, France, Germany, Italy and the U. S. S. R.) and despite the fact that there had been an increasing consolidation of activities in the AC&R system.

80. There is no doubt that to the extent that a grant of Mackay's application would result in the deliberate diversion of traffic from the AC&R cable companies, it would reduce competition between cable and radio to the points at issue. However, as we found above, common ownership and operation of cable and radio companies is prohibited under Section 314 of the Communications Act only if the purpose is or the effect thereof may be to substantially lessen competition between cable and radio. As has been set forth above, there will be substantial cable versus radio competition for traffic to the three points even if Mackay's applications are granted. Accordingly, and in view of all of the foregoing, we are of the opinion that a grant of Mackay's applications herein would not result in such substantial reduction of competition between cable and radio, or in the creation of a monopoly, so as to bring the AC&R system companies, and particularly Mackay, into violation of Section 314 of the Communications Act. We, therefore, find that Mackay is legally qualified to be licensed to operate the circuits to the points involved herein.

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81. *RCAC's Contentions.* RCAC points to the facts that a grant of Mackay's applications herein would not result in a more comprehensive service to the points at issue; would not provide different or additional classifications of service; would not generate new traffic; and would not result in an offer of service at lower rates. RCAC then alleges that with regard to the foregoing factors, the Commission "has before it an exact parallel to the situation in the Oslo case;¹ and that in the Oslo case "the Commission found that a grant of Mackay's application would not serve public interest, convenience or necessity because:

" . . . there are adequate radio and cable facilities, keen competition, and service with which there is no complaint. The proposed new circuit would not offer new or improved service, reduce rates or create traffic." ²

RCAC also points out that upon appeal the Commission's decision in the Oslo case was upheld in Court.³

82. RCAC also points to the fact that after the Oslo decision Mackay appealed to the Congress to change the standard of public interest, convenience or necessity as interpreted by the Commission and the Court; and that bills were introduced in both the House⁴ and the Senate⁵ to impose a mandate on the Commission that "in considering applications for licenses to engaged in direct foreign

¹ *Mackay Radio and Telegraph Company, Inc., etc.*, 2 FCC 592 (1936). In that case Mackay applied for authority to operate a direct radiotelegraph circuit to Oslo, Norway, which would duplicate RCAC's circuit. In addition, at that time, Norway was also served indirectly with the facilities of Western Union and Commercial. Each of these cable companies carried its Norway traffic to London where it was relayed to Norway.

² *Ibid* at page 600.

³ *Mackay Radio and Telegraph Company, Inc. v. Federal Communications Commission*, 97 Fed. (2d) 641 (1938).

⁴ H. R. 10348, 75th Cong., 3rd Sess. (1938).

⁵ S. 3875, 75th Cong., 3rd Sess. (1938).

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radiotelegraph communication, or applications for modification or renewals of such licenses, the Federal Communications Commission shall consider competition in such communication to be in the public interest." RCAC further alleges that Congress in "extensive committee hearings . . . carefully considered the same Mackay arguments which the Commission and the court rejected in the *Oslo* case;" but that the bill did not pass Congress. RCAC then argues that the "failure to adopt the Mackay position shows that the Congress was satisfied with the correctness of the existing policy of the Communications Act as interpreted by the Commission and the Court."

83. On the basis of the foregoing, RCAC contends that a grant of Mackay's applications herein would be contrary to the policies heretofore adopted by [4867] this Commission, approved by the courts, and deemed correct by Congress which failed to pass legislation requiring a change and that the Commission should, therefore, deny the instant applications.

84. *Mackay's Contentions.* Mackay contends that since Congress has refused to legislate authority for radiotelegraph carriers to merge, the only alternative is free and equal opportunity to compete; and that if the Commission does not authorize competition by issuing licenses for competing direct radiotelegraph circuits the national policy in favor of competition will necessarily be defeated. Mackay further argues that "the statutory standard 'public interest, convenience or necessity,' is intended, under applicable provisions of law and national policy to embrace and express a national policy of competition, not only between different media of telegraph facilities (cable vs. radio) but also between the same media (cable vs. cable and radio vs. radio)."

85. *Effect of Congressional Inaction.* With respect to RCAC's argument regarding the effect of the failure of the

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Congress to pass the aforementioned bills requiring the Commission to consider competition in the public interest. We do not find that such failure necessarily indicates that the Congress was satisfied with the correctness of the "policy of the Communications Act as interpreted by the Commission and the Court" in the Oslo case. Hearings were held on these bills during the closing days of the 3rd Session of the 75th Congress. In the course of the hearings on the Senate bill, Mr. Kern, General Counsel of Mackay, expressed the fear that failure of the Congress to act favorably on the bill would be interpreted as agreement with the Oslo decision.¹ In response to Mr. Kern, former Senator White of Maine, a member of the subcommittee considering the bill, stated, "I would not want the fact that there is a possibility that nothing shall be done about it in this remaining short time to be accepted by anyone as an indication of indifference to the problem before Congress or as approval of what had taken place. That is all I wanted to emphasize."²

86. "*The Oslo Decision*". This proceeding is the first case since the end of World War II in which a formal hearing has been held on applications for authority to operate radiotelegraph circuits to points already being served directly by another radiotelegraph carrier and either directly or indirectly [4868] by one or more cable carriers.³ The question before us herein of whether duplicate radiotelegraph circuits should be authorized is very similar, if not the same, as that which was before this Commission in connection with the Oslo case. As is evident from our Conclusions herein, we reach a result in the case of Portugal

¹ Hearings on S. 3875 before a Subcommittee of the Committee on Interstate and Foreign Commerce, 75th Cong., 3rd Sess. (May 11, 1938) at page 85.

² Ibid at page 86.

³ Docket No. 7723, *In the Matter of the Application of Mackay Radio and Telegraph Company, Inc., etc.*, is to be distinguished because in that case, Mackay was already authorized to communicate with Brazil from its station in New York and was seeking authority to construct an additional station near New Orleans to provide direct service between that city and Rio de Janeiro, Brazil.

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and the Netherlands different from the result we reached in the Oslo case. There follows below a discussion of the considerations which together with the findings made above, have led to the conclusions reached in this case.

87. *Volume of traffic.* The record herein shows that the volume of telegraph traffic exchanged between the United States and foreign and overseas points has more than doubled between 1936 and 1937. The over-all increase in the volume of traffic has also been reflected in the case of the three countries which Mackay seeks authority to serve herein. Thus, traffic exchanged with the Netherlands increased from 9.2 million words in 1936 to 13.6 million in 1947, the latest year for which statistics are available in the record, an increase of 47.8 per cent. For Portugal, the figures are 0.57 million words in 1936 and 5.4 million words in 1947, an increase of 847.4 per cent. Figures for Surinam are not available prior to 1940. In that year traffic exchanged with Surinam amounted to 81,315 words while in 1947, the total was 333,978 words, an increase of 310.7 per cent. From the foregoing, it is apparent that even if Mackay's applications herein are granted, and it is added as a fourth carrier to the three carriers now serving each of these points, there still would be considerably more traffic available per carrier to each of such points than there was available in 1936 to the carriers then serving the points.¹

¹ The following table indicates the number of words available per carrier serving each of the three points involved in 1936 and 1947. The 1947 figures assume that the Mackay circuit will be granted and include both Mackay and the AC&R Cable Company presently serving the points in the number of carriers.

Comparison of the Number of Words Available per Carrier in 1936 and 1947
(Mackay is included among Carriers in 1947.)

	Total Words	Number of Carriers	Words per Carrier	Per cent Increase
Portugal				
1936.....	572,850	3	157,613	
1947.....	5,422,321 ^a	4b	1,355,555	86.0%
Surinam				
1940a.....	81,315	2	40,657	
1947.....	333,978	4b	83,495	105.3%
Netherlands				
1936.....	9,175,344	3	3,058,415	
1947.....	13,595,643	4b	3,398,911	11.1%

a. No data available for Surinam prior to 1940.

b. Assumes that both Mackay and the AC&R Cable Company will continue to serve the point.

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88. *Traffic trends since the Oslo Decision.* The record further shows that there has been a strong trend in international telegraph traffic from cable to radio since the Oslo decision in 1936. At that time the cable carriers had the [4869] predominant position, handling over 70 per cent of the total United States international telegraph traffic. (They handled 76.2 per cent of the total outbound traffic and 64.9 per cent of such inbound traffic.) Ten years later however, in 1946, the radio carriers were handling a majority of the total United States international telegraph traffic (53.4 per cent). (These radio carriers handled 49.6 per cent of the outbound traffic and 57.0 per cent of the inbound traffic.) It appears, as is evidenced in the case of each of the points involved herein, that one of the basic reasons for that trend is the national and proprietary interest of many foreign administrations (with whom the American radio carriers must correspond and upon whom the American cable carriers must depend for their operating privileges and conditions), in developing radiotelegraph traffic from which these administrations derive greater revenue. In the instant proceeding, uncontroverted evidence in the record shows that the Netherlands Administration, which has no proprietary interest in cables and which receives little financial return from cable traffic, is actively interested in developing its own radiotelegraph circuits from which it receives a greater share of the tolls on both inbound and outbound traffic. In the case of Portugal, a similar situation exists. Portuguese Marconi, RCAC's correspondent, controls most of the traffic from Portugal and is naturally interested in fostering the development of radiotelegraph traffic. An additional important factor in the growth of radiotelegraph traffic has been the authorization by the Commission of numerous additional direct circuits to various points, and as will be set forth more fully below, a large number of the direct circuits authorized since 1936 were duplicating circuits.

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89. *Licensing practices subsequent to Oslo case.* A review of the Commission's licensing practices since 1936 indicates that the Commission has not in fact followed a "single circuit" policy. Thus, since the Oslo decision, the Commission has granted authorizations for carriers engaged in the fixed public service to operate duplicating radio-telegraph circuits to 41 countries.¹ Of these authorizations, 14 duplicating circuits were in operation at the time of the hearings herein.² (The above figures do not include grants to Press Wireless which is licensed in the fixed public press service.) On the other hand, aside from the Oslo application (and the Rome application decided on the same basis) the Commission has denied 14 applications³ for duplicate authorizations filed by carriers in the fixed public service. It should be noted, however, that these eleven denials took place between January, 1943 and May, 1945, during the time when, pursuant to a request of the Board War Communications, the Commission followed a single circuit policy.

90. While it is true that many of the 41 duplicate circuit authorizations referred to above were granted as a result of the policy enunciated by the Board of War Communications on April 16, 1942 (and in effect until January 21, 1943), "that parallel circuits be established to various points overseas," it should be noted that various other duplicate circuit authorizations were granted after the end of World War II. Thus, Mackay was authorized to operate duplicate circuits to Paris, France, Berlin, Germany, and the Dominican Republic, points it had not served prior to

¹ This includes 24 authorizations for duplicate circuits which were granted during World War II but none of which was opened.

² These were Austria, Bermuda, Brazil, Bulgaria, Dominican Republic, Egypt, England, France, Germany, Italy, Spain, Tangier and the U. S. S. R.

³ This does not include the instant applications nor those involved in Dockets Nos. 7094 and 7432 (The British Circuits Case), where by virtue of an agreement with the United Kingdom and with certain other Commonwealth countries only one circuit could be authorized between the United States and various points. (See page 10 of mimeographed report issued December 5, 1947).

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World War II. Likewise, RCAC was authorized to operate a duplicate circuit to Vienna, Austria, a point it had not served prior to World War II. In addition to the foregoing, the Commission also authorized the re-establishment of duplicate circuits to various countries which had been enemy occupied during World War II. Finally, it should be noted that outstanding authorizations for the various duplicating circuits have been renewed from time to time by the Commission.

91. *"Playing-off" of United States carriers.* RCAC contends that since both it and Mackay would communicate with the same foreign correspondent in each of the three points at issue herein, a grant of Mackay's applications would make it possible for such foreign correspondents to drive progressively harder bargains by playing one American carrier against the other to the advantage of the foreign correspondents; and that this would be detrimental to the American communications system and the public which uses its facilities. There is no doubt that there is some danger that such attempts may be made and that in the past certain foreign correspondents may have been able to secure more favorable terms by "playing-off" one of the two United States carriers with whom they corresponded against the other such United States carrier. We note, however, that in the instant proceeding the terms and conditions under which Mackay would operate its proposed circuits would be same as those under which RCAC now operates the circuits. In addition, under the requirements of the Communications Act of 1934 and the Commission's Rules each carrier is required to report periodically with respect to all negotiations such carrier is carrying on with its foreign correspondents and to file copies of all contracts or amendments thereto which it concludes with its foreign correspondents. The Commission would therefore be aware of all proposed changes in the agreements between the par-

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ties prior to their consummation. If it should appear that any proposed changes in the existing contracts or agreements would be seriously prejudicial to the interests of the carriers involved or to the United States international telegraph industry as a whole, the Commission would have ample opportunity to make its views known to the carrier or carriers involved. Aside from this, the Commission, has statutory authority, particularly in connection with its consideration of applications for renewal of licenses, which would enable it to take the appropriate action in those cases where a carrier persisted in making concessions which were seriously detrimental to the interests of the United States industry.

92. *National Policy in Favor of Competition.* The national policy of the United States is one favoring competition. This policy is reflected in the anti-trust laws and is based on the principle that competition is generally more desirable than monopoly. Competition can generally be expected to provide a powerful incentive for the rendition of better service at lower cost. Those seeking the patronage of customers are spurred on to install the latest developments in the art in order to improve their services or products, and in order to enable them to reduce expenses and thereby lower their rates or prices. The benefits to be derived from competition should, therefore, not be lightly discarded.

[4871] 93. It is clear from a reading of the Communications Act that the national policy in favor of competition as set forth in the anti-trust laws has been expressly extended to the field of international communications. Thus, Section 313 of the Act entitled "Application of Anti-trust Laws" specifically provides that the anti-trust laws "are hereby declared to be applicable . . . to interstate or foreign radio communications." In addition, Section 314 of the Act which is entitled "Preservation of Competition in Com-

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merce" prohibits common ownership, control or operation of international cable and radiotelegraph companies, if "the purpose is and/or the effect thereof may be to substantially lessen competition or to restrain commerce . . . or unlawfully to create monopoly in any line of commerce." In addition, we note that the Congress has not approved any of the numerous proposals and bills which have been before it from time to time looking toward a merger of international telegraph companies.¹ Under these circumstances, the above-described policy of competition would appear to be specifically applicable to international communications, particularly radio communications.

94. Further, a review of the Commission decisions indicates that in the past we have taken official cognizance of this policy in our decisions. Thus, in the "British circuits case"² we stated as follows:

"As the Commission recently had occasion to observe in its report of July 30, 1947, in Docket No. 8230, dealing with international telegraph rates:

"The national policy in international communications is that competition be maintained, and Congress has not approved any proposals looking toward merger of the United States international telegraph carriers.'"

[4872] "It is apparent in this case, as has been indicated above, that in view of the limitation in the Bermuda Telecommunications Agreement of one cir-

¹ See H. Doc. No. 83 (1934) embodying Recommendations of the Federal Communications Commission for amending the Act; Hearings before a subcommittee of the Senate Committee on Interstate Commerce, pursuant to S. Res. 95, 77th Cong., 1st Session (1941); Hearings before a Subcommittee of the Senate Committee on Interstate Commerce on S. 2445 and S. Rept. 1490 on S. 2598, 77th Cong., 2d Sess. (1942); Study of International Communications, a report on hearings held pursuant to S. Res. 187, 79th Cong., 1st Sess. (1945); S. Rept. 1907, 79th Cong., 2d Sess. (1946); and S. Rept. 19, 80th Cong., 1st Sess. (1947).

² Dockets Nos. 7094 and 7412, Mimeographed Report issued December 3, 1947.

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cuit to each point, it is not possible to reach a result here of direct competition between RCAC and Mackay as to any of the points at issue. Generally, competition between the two carriers regarding any one point of service would be at its sharpest where both operated direct circuits to the point. Since in this case the Commission has to select one or the other of the two carriers for each point involved, the grantee for each point will have such competitive edge as to service to that point as results from a direct radio circuit. The Commission is, accordingly, confronted with the necessity of applying the policy of competition so far as this can be done within the above limitations.

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 "Upon consideration of the above factors, it is the Commission's view that the decision on the applications at issue should be calculated to maintain as much competition between Mackay and RCAC as is feasible under the particular circumstances of this case. . . ."

95. That a regulatory Commission has an affirmative duty to consider the policy expressed in the Anti-trust laws in the performance of its statutory duties is clear from a reading of the *McLean Trucking* case¹ in which the court said:

"... the fact that the carriers participating in a properly authorized consolidation may obtain immunity from prosecution under the anti-trust laws in no sense relieves the Commission [The Interstate Commerce Commission] of its duty, as an administrative matter, to consider the effect of the merger on competitors and on the general competitive situation in the industry in the light of the objective of the national transportation policy."

¹ *McLean Trucking Company v. United States* 321 U. S. 68, 87 (1943).

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96. *Importance of Direct Circuits to Effective Competition.* We are aware from our experience in the field of international communications that the ability of a carrier to provide direct communication service is an important factor in appealing for customer patronage; that the operation of direct circuits tends to improve the carriers ability to secure inbound traffic; and that it is claimed that the handling of additional inbound traffic improves the carriers competitive position and ability to develop outbound traffic. The importance which the various international telegraph carriers attach to direct circuits has been amply demonstrated by both the eagerness with which applications for such circuits are pressed and by the strenuous opposition expressed by companies authorized to operate such circuits when confronted with applications for duplicate circuits.

[4873] 97. *Competition by Indirect Circuits.* It should be pointed out that neither RCAC nor Western Union has suggested that Mackay not be permitted to handle traffic to the points involved via indirect routes such as Lima or London. Nor does the Commission limit a carrier to handling traffic only to those points to which it is licensed to operate a direct circuit. On the contrary, practically all of the international cable and radio carriers handle traffic to many points in the world to which they do not have direct facilities. In other words, the carriers apparently recognize, and the Commission permits, competition to direct radiotelegraph circuits from indirect circuits. Certainly, as noted above, except in unusual circumstances, the best opportunity for competition between radiotelegraph carriers would be where there are direct circuits. In addition, competition by indirect circuits usually involves extra handling at relay points, slower service and a smaller share of the tolls for the United States carriers. It is difficult to find that the public would benefit from an action on our part which would operate to forbid competition between radiotelegraph carriers except through indirect circuits.

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However, as is set forth more fully below, our discussion herein should not be interpreted as an indication that we are required, in all cases, to grant an application when the effect thereof will be additional competition. It does indicate, however, that competition is an important element in a determination of whether the public interest, convenience, or necessity would be served by a grant of an application which may be before us.

98. *Effect of "Single" Circuit Policy.* Basically, the question with which we are confronted here is the so-called "single" versus "duplicate" circuit question. The "Oslo" case has been construed as enunciating a "single circuit" policy. However, as we have pointed out above, the Commission has not followed a "single circuit" policy subsequent to that case. Nor has it taken effective steps¹ through its licensing procedures to effectuate a "single circuit" policy, assuming it had such a policy. Should we now enunciate a "single circuit" policy, and should we effectuate such a policy by subsequently refusing to renew licenses for duplicating circuits, what the Commission will have accomplished is the elimination, for all intents and purposes, of effective competition in the radiotelegraph field. To be sure, there might still remain more than one radiotelegraph carrier in the field, but such carriers would not be competing with each other. Each carrier would have unto itself a practical monopoly in radiotelegraph business to the countries it was licensed to serve. It may be argued that there could still be competition from indirect radiotelegraph circuits. However, as indicated above, such competition is generally not [4874] as effective as direct competition, and, therefore, cannot provide the full benefits which are normally to be expected from competition. To

¹ The Commission did institute a general review of the matter by its Order of November 27, 1946, In the Matter of Radiotelegraph Service between the United States and foreign and overseas points, etc., Docket No. 7974. However, hearings were never held in that case and by Order of March 24, 1948, proceedings therein were postponed until further Order of the Commission.

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enunciate a "single circuit" policy and to implement such a policy in connection with outstanding licenses, might very well be doing that which our National Policy frowns upon, and that which Congress has, as yet, refused to permit by way of merger legislation.¹

99. *Statutory Standards:* In arriving at a decision on any application before us, we must determine whether the applicant has demonstrated that a grant of such application will serve the public interest, convenience or necessity. These statutory standards include many elements which must be evaluated in the light of the particular facts of record in each instance. In evaluating the facts of record we must accord due weight to the above-described national policy in favor of competition. In addition, we must also act in such fashion as to effectuate the purpose of the Communications Act, namely, " . . . to make available, as far as possible, to all the people of the United States a rapid, efficient Nationwide, and world wide wire and radio communication service with adequate facilities at reasonable charges"²

100. We are of the opinion that in those instances where there is only one direct radiotelegraph circuit to a point, we should authorize a second competing radiotelegraph circuit where the applicant demonstrates that such competition is reasonably feasible. In the instant proceeding, Mackay has demonstrated that it is technically, financially and legally qualified to provide adequate service to the points at issue; that a grant of its applications would enhance competition generally and introduce competition between direct radiotelegraph circuits; and that a grant of its applications would not endanger the ability of RCAC

¹ It is true that there would still remain competition from the cable carriers, however, as indicated above the cable carriers are at a disadvantage in competing for traffic to hinterland countries (particularly in the European area) which they cannot reach over their own facilities.

² Communications Act of 1934, as amended, Section 1, 47 USC §151.

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and Western Union to continue to provide competitive service either to the points at issue or, generally, in the field of international telegraph communications. There remains now for consideration the question of whether the volume of traffic available to the points is sufficient to justify the grant of additional direct radiograph circuits therewith.

101. The record shows that *The Netherlands* is an important traffic center in the European area; that of the 89 countries in the area of Europe, Africa and the Near East, for which traffic data are reported separately by the various United States international telegraph carriers. The Netherlands, in the first half of 1947, ranked *eighth* and accounted for more traffic inbound to and outbound from the United States than 81 countries in this area. Under these circumstances, we are of the opinion that Mackay has demonstrated that competition between carriers providing direct radiotelegraph service to The Netherlands is reasonably feasible. We are aware that there is a possibility that Mackay may require an additional frequency or frequencies to provide service to The Netherlands during the entire 11 year sunspot cycle. We cannot find, however, that in view of the other considerations set forth above, this possibility in and of itself should deter us from granting Mackay's applications to serve The Netherlands.

102. The record shows that *Portugal* is an important traffic center in the European area, that of the 89 countries in the area of Europe, Africa and the Near East, for which traffic data are reported separately by the various United States international telegraph carriers, Portugal, in the first half of 1947, ranked 13th with respect to *traffic outbound* from the United States and 14th with respect to traffic inbound to [4875] the United States, thus accounting for more traffic than 75 countries in this area. Under these circumstances we are of the opinion that Mackay

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has demonstrated that competition between carriers providing direct radiotelegraph service to Portugal is reasonably feasible.

103. Finally, the record shows that at the time of the hearing herein RCAC operated its circuit to Surinam at a loss; that this loss would be increased by a grant of Mackay's application to serve Surinam; that Surinam is a relatively unimportant traffic center in the Western Hemisphere, accounting for less than 2/10 of 1 per cent of the total traffic exchanged between the United States and countries in the area composed of the West Indies, Central, North and South America, and about 1/20 of 1 per cent of the total traffic exchanged with all overseas and foreign points; that of the 52 countries in the area of the West Indies, Central, North and South America, for which traffic data are reported separately by the United States international telegraph carriers, Surinam, in the first half of 1947, ranked 31st with respect to traffic outbound from the United States and 29th with respect to traffic inbound to the United States. Under these circumstances, we cannot find that the authorization of an additional direct circuit to provide competition between carriers providing direct radiotelegraph service to Surinam would be reasonably feasible. Any such authorization on our part would, in essence, require us to close our eyes to the practicalities of the situation and to find that the provision of competition in direct radiotelegraph circuits is an overriding consideration. Such action is not required by the national policy in favor of competition nor by the Communications Act.

CONCLUSIONS

104. In view of all the foregoing and upon consideration of the record herein, as well as the proposed findings, conclusions, exceptions and briefs in support thereof filed by

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the parties, and the oral argument made by such parties, we find and conclude:

(1) That public interest, convenience and necessity will be served

(a) by a grant of the application of Mackay Radio and Telegraph Company, Inc., for modification of license to communicate with Amsterdam, Netherlands; and

(b) by a grant of the application of Mackay Radio and Telegraph Company, Inc., for modification of license to communicate with Amsterdam, Netherlands, via Tangier.

(2) That public interest, convenience and necessity will be served by a grant of the application of Mackay Radio and Telegraph Company, Inc., for modification of license to communicate with Lisbon, Portugal.

[4876]

(3) That public interest, convenience, or necessity will not be served by a grant of the applications of Mackay Radio and Telegraph Company, Inc., for modification of license or for special temporary authority to communicate with Paramaribo, Surinam.

(4) That in view of the foregoing conclusions, the applications of Mackay Radio and Telegraph Company, Inc., for special temporary authority to communicate with The Netherlands and with Portugal become moot and should be dismissed.

ORDER

IT IS, THEREFORE, ORDERED this 21st day of February, 1931, that pursuant to the provisions of Section 309(a) of the Communications Act of 1934, as amended, that part of

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the application of Mackay Radio and Telegraph Company, Inc., for modification of license to authorize direct communication with Portugal and The Netherlands (File No. 8047-MLHT-A) and its application for modification of license to authorize communication with The Netherlands via Tangier, (File No. 7619-C4-ML-C) ARE GRANTED, and the license of Mackay Radio and Telegraph Company for its fixed public service station located at Brentwood, New Jersey, (File No. 44-C4-R-51) IS MODIFIED as follows:

Section 2, add:

(a)	(b)	(c)
Administration of Posts Telegraph and Telephone of The Netherlands	Amsterdam, Netherlands	6
Companhia Portuguesa Radio Marconi	Lisbon, Portugal	—

IT IS FURTHER ORDERED that pursuant to the provisions of Section 309(a) of the Communications Act of 1934, as amended, that part of the application of Mackay Radio and Telegraph Company, Inc., herein for modification of license to communicate with Surinam (File No. 8047-MLHT-A) and the applications for special temporary authorization to communicate with Surinam (File No. T1-RSA-659-1) ARE DENIED:

IT IS FURTHER ORDERED, that the applications of Mackay Radio and Telegraph Company, Inc., for special temporary authorization to communicate with Portugal and The Netherlands (Files Nos. T1-RSA-658-1, and T1-RSA-657-1) ARE DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

T. J. SLOWIE,
Secretary.

Released: February 23, 1951.

* See attached dissents of Commissioner Webster and Sterling.

[4878] APPENDIX A**Rulings of the Commission on Exceptions
Filed by RCA Communications, Inc.**

- | Exceptions
Nos. | |
|---|---|
| 1 | The findings to which this exception is taken have been changed so that all reference to RCAC's stations is deleted. These findings are now limited to a description of Mackay's stations. The findings do not purport to compare the stations of Mackay and RCAC. The request for findings with respect to the comparative qualities of Mackay's and RCAC's stations are denied as irrelevant to our Decision herein for the reason set forth therein. |
| 2 | Is granted in part, in that the heading is changed from "Coordinated" to "Consolidated". Otherwise, the exception is denied because the record supports the findings as made, rather than the findings requested. |
| 3 | Is granted in part, insofar as it requests that the Commission consider and rule upon RCAC's contention that a grant of Mackay's applications herein would result in a violation of Section 314 of the Communications Act of 1934, as amended, and our Decision contains a detailed consideration of RCAC's contentions with respect to this matter. |
| 4 and 5 | Are denied for the reasons set forth in our Decision. |
| 6, 8, 19, 28(1),
28(2), 36,
49(1), 49(2),
and 56 | Are not material to the Decision herein in view of the grounds upon which our Decision is based. |
| 7 | Is granted insofar as it requests a specific finding that Mackay must demonstrate that a grant of its applications would serve the public interest, convenience, or necessity, but is otherwise denied for the reasons stated in our Decision. |
| 9 | Is granted in that a table is added comparing the share of traffic handled by Commercial, Western Union and |

Appendix A.

Exceptions Nos.

RCAC in the years 1937-1939 with that handled in the years 1945-1947 (first half) and a finding is made that there is active competition at present. The record supports the finding, as amended, rather than the findings as requested.

[4879]

10

Is granted in part in that the number of countries to which there is direct competition in radiotelegraph circuits has been changed from 13 to 11, and in that it is noted that certain of these circuits were granted by the Federal Radio Commission or by this Commission during World War II. Otherwise the exception is denied because the record supports the findings as made and because such findings are relevant and material in the light of the interpretation which we believe should be given the national policy in favor of competition by direct radiotelegraph circuits.

11, 12, 14, 20,
31, 37, 39, 41,
52 and 54

Are granted and the Decision reflects the adoption thereof.

13, 18, 24, 25,
42, 43, 48,
49(3), 49(4),
50, 57, 61, 64,
and the unnum-
bered excep-
tions to Conclu-
sions

Are denied for the reason that the record substantiates the amended findings and conclusions to which these exceptions are taken.

15, 34, and 60

Are granted in that the findings to which these exceptions are taken have been deleted.

16

Is granted in part in that the Decision is changed to show that there is a possibility that Mackay will require an additional frequency or additional frequencies. The exception is otherwise denied because the record supports the findings as amended rather than the additional findings requested.

Appendix A.

Exceptions Nos.

17

Is granted in part in that the Decision is changed to indicate that when Commercial's eastbound automatic relay is established, Mackay's proposed service in that direction would not appear to be superior to that which Commercial could provide. The exception is otherwise denied because the record supports the findings as amended rather than the additional findings requested.

21 and 47

Are granted in part in that the Decision is changed to indicate that Mackay would have an advantage in securing inbound traffic. The exception is otherwise denied because the record supports the findings as amended rather than the additional findings requested.

22

Is granted in part in that the Decision is changed to indicate that Mackay makes no allocation of existing costs and that its out-of-pocket expenses would be increased as indicated. The exception is otherwise denied because the record supports the findings as amended rather than the additional findings requested.

[4880]

23 and 38

Are granted in part in that the Decision is changed to show that a grant of Mackay's applications would result in a reduction in revenue to the AC&R system and the American communications industry as a whole on out-bound traffic diverted from Commercial to Mackay. The exceptions are otherwise denied because the record supports the findings as amended rather than the additional findings requested.

26

The exception is denied because the record supports the finding as amended rather than the finding requested.

27

Is denied because the record shows that despite the growth of Mackay, RCAC enjoyed a substantial operating income until 1946. After that year RCAC's operating income declined as did that of the other parties in this proceeding. This exception, to some extent, repeats other exceptions, and our rulings on those exceptions are, therefore, applicable hereto.

Appendix A.

Exceptions
Nos.

- 28(3), 29, 30 and 51 Are granted in part and denied, in part as is indicated herein in our rulings on exceptions nos. 2, 3, 4, 15, 16, 17, 21, 22, 23, 24, 25, 26, 27, and 47.
- 32, 44 and 45. Are granted in part in that a table is added comparing the share of traffic being handled by Commercial, Western Union, and RCAC in the years 1937-1939 with the share handled in the years 1945-1947 (first half) and notice is taken of the fact that Commercial's failure to secure a greater share of the outbound traffic affected its share of the inbound traffic. Exceptions are otherwise denied because the record supports the findings as amended rather than the additional findings requested.
- 33 Is granted in part in that it is noted that certain circuits were granted by the Federal Radio Commission or by this Commission during World War II. The exception is otherwise denied because the record supports the findings as made and because such findings are relevant and material in the light of the interpretation, which we believe should be given to the national policy in favor of competition.
- 35 Is not material insofar as exception is taken to the failure to find that Mackay's service would be inferior to that of RCAC for the reasons set forth in our Decision. Insofar as exception is taken to the failure to find that a grant of Mackay's application would tend to degrade existing service, it is denied because the record shows that such grant would not have an appreciably adverse effect on RCAC's service. Finally, insofar as exception is taken to the failure to find that a grant of Mackay's applications would place obstacles in the way of improving New York-Lisbon service, the exception is denied for the reasons stated in our Decision herein.
- [4881]
- 40 Is granted in part in that the finding to which exception is taken is deleted. Insofar as the exception requests additional findings, it is denied because the record sup-

Appendix A.

Exceptions
Nos.

ports the findings in our Decision herein as amended rather than the additional findings requested.

46(a)

The finding to which exception has been taken has been revised and, as revised, is supported by the record.

46(b)

Is granted in part in that the Decision herein is changed to indicate that Italcable approached Commercial with a proposal to reinstitute the prewar direct circuit and that the record does not show that Commercial responded to these overtures. The exception is otherwise denied because the record supports the findings as amended rather than the additional findings requested.

53 and 58

Rulings on these exceptions are unnecessary in view of our Decision herein.

55

Is granted in part in that a finding is made that if Mackay's application to communicate with Surinam were granted, RCAC's loss in operating this circuit would be increased. The exception is otherwise denied because the record supports the findings as amended rather than the additional finding requested.

59

The statement to which exception is taken is deleted and RCAC's contentions are considered in detail. These contentions are disposed of in the Decision.

62

Is denied for the reasons given in the Decision.

63

Is granted in part in that, except for the statement made with respect to the claimed effect that the handling of inbound traffic has on the development of outbound traffic, the findings to which exception is taken are deleted.

65

The contentions of RCAC that a grant of Mackay's applications would give foreign administrations the power to drive progressively harder bargains to the prejudice of the two American carriers are considered, but the requested finding is denied for the reasons given in the Decision.

*Appendix B.***Exceptions
Nos.**

66

Is denied because the record supports the Decision. With respect to the contention that Mackay has not met the burden of proof, this part of the exception is also denied for the reasons stated in the Decision. Insofar as the exception requests a ruling on Mackay's contention that there should be a duplicate radiotelegraph service to every country to which there is one direct circuit the exception is granted, and as is indicated in our Decision, Mackay's contention is rejected.

[4882] APPENDIX B

**Rulings of the Commission on Exceptions
Filed by Mackay Radio and Telegraph Company, Inc.**

- | | |
|------------|---|
| 1 | Is granted in that the finding to which exception is has been deleted. |
| 2, 4 and 5 | Are denied because the record substantiates the findings to which exception is taken. |
| 3, 7 and 8 | Are denied because the record supports the findings as made rather than the findings requested. |
| 6 | Is not material to the Decision herein and it is, therefore, unnecessary to rule thereon. |
| 9 | Is denied because, as found in the Decision, a grant of Mackay's application would increase RCAC's losses in operating the Surinam circuit. |
| 10 | Is denied because the Conclusion reached with respect to this matter is supported by the record. |

*Appendix B.***[4883] DISSENT OF COMMISSIONERS E. M. WEBSTER AND
GEORGE E. STERLING**

We cannot agree with the majority's decision that it would be in the public interest to grant these applications, because we are of the opinion that certain basic and ultimate findings, not reached by the majority, but obviously required by the record when considered in the light of collateral official reports of the Commission, are far more controlling than those that were made, and unquestionably point to a conclusion opposite from that of the majority here.

As we see it, the question before us in this proceeding is essentially whether the Commission should, in effect, reaffirm the policy enunciated in the "Oslo" case cited in this decision. The majority here take issue with the conclusion in that case and apparently have adopted Mackay's position that both this Commission and its predecessor, the Federal Radio Commission, have recognized the national policy in international radiotelegraph communications to be a policy of competition; and that the statutory standard of public interest, convenience or necessity is intended under applicable provisions of law and national policy, to embrace and express a national policy of competition, not only between different media of telegraph facilities (cable vs. radio) but also between the same media (cable vs. cable and radio vs. radio). They therefore find that Mackay's applications should be granted in order to promote and effectuate this national policy of competition. In this connection, the majority also pointed to the fact that Congress has thus far failed to enact legislation authorizing a merger of international telegraph carriers, and conclude that the only alternative is free and equal opportunity to compete. The majority reason that if the Commission does not authorize such competition, the aforementioned national policy would be defeated. They are not deterred from their conclusion by the fact that Mackay not only indicated

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it would seek to duplicate each of the circuits operated by RCAC, but took the position *that such duplication should be authorized even though it might require rate increases to keep the carriers from operating at a loss.*

One of the main factors which has brought this country into the position of leadership among nations is its determination to maintain the "free enterprise" principle adopted by our founding fathers. We feel certain that this country will remain strong and prosper only so long as this principle is generally continued. However, the principle of free enterprise or free competition, as pertains to such fields of endeavor as wire and radio communication, must be applied in the light of the limiting factors peculiar to such industry, which include,

- (1) the necessity for maintaining a strong national and international radio and wire communications system, and
- (2) the overall scarcity of available radio frequencies, due to sharing spectrum space with other countries.

Considering only the foregoing limitations, it is evident that this field is not susceptible to free and untrammelled competition nor indiscriminate expansion or duplication of facilities and service. This fact is so obvious that Congress, long before communications became the complicated field that [4884] it is today, enacted legislation¹ regulating interstate and foreign commerce in communication by wire and radio in order to make available, so far as possible, to all the people of the United States a rapid, efficient, nation-wide and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose, among other things, of the national defense and of promoting safety of life and property.²

¹ It is to be noted that in various public utility fields, such as transportation, electric light and power, etc., appropriate legislation has been enacted to permit limitation of competition.

² See Communications Act of 1934 as amended, Section 1.

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However, desiring to preserve as much competition as possible in this field, Congress made provisions therefor in legislation which now finds itself set forth in Sections 313 and 314 of the Communications Act of 1934 as amended. We cannot, however, accept the construction placed upon these sections by the majority. Instead, we are of the opinion that the proper interpretation was placed upon these sections and the Act as a whole by the United States Circuit Court of Appeals for the District of Columbia in its decision in the "Oslo" case, *Mackay Radio and Telegraph Co., Inc. v. FCC*, 97 F. (2d) 641, 643 (1938). There, the Court stated in part:

"...It (the Communications Act) does not apply to radiotelegraph business the policy of free competition, but a contrary policy. Free competition means that all are free to compete. The Communications Act forbids competition by all who cannot prove that their entry will serve the 'public interest, convenience or necessity.'"

It is apparent that under the above construction of the Communications Act all carriers are free to compete for frequencies and authorizations to serve new or different points. Moreover, a carrier has every right to compete for facilities already being used by another carrier, or points being served thereby. We would unhesitatingly vote to substitute one service for another if, in a proper proceeding, the weight of evidence showed that it would be in the public interest to do so. And, of course, where it can be definitely established that the public interest would be served by licensing more than one carrier to serve in a given area little, if any, problem is presented. In the instant case Mackay has made no such showing. The failure to make such showing is clearly established by the following findings of the majority: (1) there now exists active competition not only between cable carriers and between cable

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and radiotelegraph carriers serving the points involved, (and, in the case of Portugal, between radiotelegraph carriers), but also between such carriers and the airmail and radiotelephone services; (2) the capacity of existing telegraph communications facilities between the United States, on the one hand, and The Netherlands, Portugal and Surinam, on the other hand, is in excess of that required to handle the present and expected volume of telegraph traffic under normal operating conditions; (3) there is some possibility that Mackay may find it necessary to seek an additional frequency or frequencies in order to provide continuous service throughout the eleven year sunspot cycle; (4) it does not appear that Mackay's service proposed herein will result in lower rates or speedier services, or will otherwise be superior to or more comprehensive than the service now available via RCAC; however, it will be superior to the cable services; (5) a grant of Mackay's applications herein cannot reasonably be expected to generate new traffic in any substantial degree [4885] but rather that such grant would result in a redistribution of existing traffic volumes among the carriers serving the three points; (6) a grant would increase Mackay's operating expenses and revenue while the expenses of the other carriers would not be reduced; (7) the proposals would decrease the revenues of all established competing companies except the applicant's; (8) a competitive advantage would accrue to the AC&R system in general, and to Mackay in particular, from the proposed operations, but will lessen the advantage which RCAC has heretofore enjoyed with respect to inbound traffic; (9) any diversion of outbound traffic from Commercial to Mackay would result in a reduction in revenue to the AC&R system and, to that extent, would impose an additional financial burden upon the United States Communications system as a whole. We agree with these findings, but we note that none of them gives any indication of public benefit. Rather, they would indicate that the public interest will suffer as a result of these grants.

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In addition, the majority have found that (1) of Commercial Cable's eastbound traffic to The Netherlands 50 per cent would be diverted to Mackay. In the event there is not enough traffic for the Mackay circuit to make up an amount equal to 50 per cent of the total traffic within the control of Commercial and Mackay, which Mackay has guaranteed to deliver over the proposed circuit, Mackay would be obliged to persuade users to route via Mackay their traffic which might otherwise be handled by Commercial, or possibly to make a payment to The Netherlands Administration to make up for the deficit. It therefore appears that a substantial amount of Commercial's traffic will be diverted to Mackay and, to that extent, would bring about the non-use of a competing company in the telegraph field; and (2) a grant of these proposals will introduce more effective competition between radiotelegraph carriers serving the points involved; and (3) when the over-all effect of a grant of the applications is considered, it appears that the added costs which might result on an industry-wide basis will be relatively small so that the impact on the rate structure as a whole should not be substantial.

While we do not disagree with these three findings so far as they go, we believe that if the majority were to develop these findings to the extent called for by the facts of record, they would, of necessity, be required to reach a different conclusion in this case.

Not only will Mackay divert to its radiotelegraph circuits 50 per cent of Commercial's traffic to The Netherlands, but, in addition, there is strong evidence in the record that Mackay will siphon off at the source certain traffic which normally is specifically routed through Commercial Cable to Portugal via the Azores and which can not be diverted to Mackay after being so routed. The record indicates that approximately three-fourths of the traffic handled by Commercial Cable to Portugal through the Azores is specifically routed, and Commercial has a contract to turn over all such traffic to its correspondent at the Azores. Obviously,

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once this traffic is specifically routed, Mackay can not divert this traffic to its radiotelegraph circuit, and it would appear at first glance that to this extent Commercial would continue to handle traffic of this nature. *But the majority fail to point out the fact that the record shows that [4886] there is a strong probability that Mackay will make every effort to tap such traffic at its source before it can be specifically routed through Commercial.* In an effort to ascertain Mackay's intentions in this connection one of its witnesses (traffic manager) in this case was asked on cross examination whether Mackay's solicitors were instructed to persuade customers using Commercial Cable to Madrid, Spain, via the Azores, to change their routings to Mackay³.

"I think they are instructed to do that. . . . I wouldn't know definitely, but they ought to be and they should be. That is a 100 per cent owned system service."

Since Commercial's contract regarding traffic to Spain is the same as that with respect to Portugal, it is clear that, in the event of a grant of Mackay's applications herein, the AC&R system will follow the same practices in an attempt to divert to Mackay Commercial's specifically routed Portugal traffic. Accordingly, it is apparent that through these grants Commercial Cable will be deprived by Mackay of more of its normal traffic than the admitted 50 per cent to The Netherlands and the admitted 25 per cent to Portugal.

This brings us to the majority's second limited finding that a grant of these applications will introduce more effective competition between radiotelegraph carriers to the points involved. There can be no denying this fact, but neither can it be denied that the record supports and even demands in this connection a more comprehensive basic finding. Since it is admitted that a grant of Mackay's applications will not generate any increase in traffic it is

³ Mackay operates a direct circuit with Spain and is the normal route for all AC&R traffic to that country. Commercial handles only specifically routed traffic to Spain via its cable to the Azores.

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clear that a substantial amount of the outbound traffic it will handle will come to it by diversion from Commercial. It thus follows that any increase in radiotelegraph competition will be offset by a decrease in cable vs. cable competition. Yet the majority made only a fleeting mention of this fact.

We now come to the third of the majority's findings which we believe are too limited. The majority found that when the over-all effect of a grant of the applications is considered, it appears that the added costs which might result on an industry-wide basis will be relatively small so that the impact on the rate structure as a whole should not be substantial. While it is not stated in so many words in the decision, there can be no question but that the impact referred to means an increase, since there could be no decrease in the light of added costs. In other words, the majority is cognizant of the fact that merely on the basis of these two grants alone there may be some "impact on the rate structure," but, at the same time, they make no finding with regard to increase in rates which will inevitably result from the policy enumerated by the majority which would permit Mackay to duplicate additional RCAC and other companies' radiotelegraph circuits throughout the world. And if we grant these applications there is no reason why we should deny similar Mackay proposals which they have unequivocally stated they intend to make. We are unable to understand why the majority has failed to look beyond the instant grants in reaching a finding with respect to rates, since public interest is so vitally affected thereby.

[4887] From the basic findings in the decision the majority made the ultimate findings that Mackay is legally, technically and financially qualified to provide adequate service to the points involved; that a grant of its application would enhance competition generally and introduce competition between direct radiotelegraph circuits; that

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a grant of its applications would not endanger the ability of RCAC and Western Union to continue to provide competitive service either to the points involved, or, generally, in the field of international communications; that the volume of traffic available to the points is sufficient to justify the grant of additional direct radiotelegraph circuits thereto; and that, under these circumstances, they are of the opinion that Mackay has demonstrated that competition between carriers providing direct radiotelegraph service to The Netherlands and Portugal is reasonably feasible. At this point they determine that in those instances where there is only one direct circuit to a point, the Commission should authorize a second competing radiotelegraph circuit where the applicant demonstrates that such competition is reasonably feasible. Whereupon they conclude that public interest will be served by a grant of these applications.

The majority have made an ultimate as well as basic finding that these grants will enhance competition between direct radiotelegraph circuits. However, as we previously pointed out, these grants will result in a substantial loss of business for Commercial Cable, and it is our belief that the facts of record, when considered in the light of additional grants which will inevitably follow, lead to the conclusion that the policy enunciated by the majority will mean the practical withdrawal of Commercial Cable from competition to these points. But, even if viewed in a light most favorable to Mackay, and Commercial is not compelled to practically withdraw from competition, there is no question but that, with the substantial reduction in traffic clearly indicated in the record, it is likely that *Commercial will be so weakened that it will cease to offer any effective competition to radiotelegraph or cable companies.* This fact cannot be ignored because we are confronted with the problem as to whether these grants of the Mackay proposals would result in a violation of the provisions of Section 314 of the Act.

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The Commission, as pointed out in the majority's decision, has previously held⁴ that the provisions of Section 314 of the Act are applicable to AC&R; that the ownership, control and operation of cable and radio companies and facilities within the AC&R system do not constitute or result in violation of Section 314 of the Act; and that Section 314 was intended to preserve competition between cable and radio as two separate media of communication. We have no desire to retreat from this position. But we note that in that decision, the Commission specifically found that "... there remains a possibility of a violation by them (AC&R System) on the basis of facts and circumstances not now found to be present." There is no doubt that a grant of Mackay's applications herein to serve Portugal and The Netherlands and the attendant diversion of traffic from Commercial will further reduce Commercial's power to compete effectively with radiotelegraph companies. While the instant proposed grants, or any single future grant, may not *per se* bring the AC&R System into violation of Section 314 of the Act, we are of the opinion that the general policy of [4888] granting Mackay duplicate radiotelegraph circuits wherever they are found to be reasonably feasible may inevitably result in such a substantial reduction of competition between cable and radio (due to the progressive elimination of Commercial Cable) as to bring the AC&R System into violation of Section 314 of the Act and place Mackay in the position of being legally disqualified to hold any of its licenses. Obviously, it will be necessary for the Commission at some point to give serious consideration to denying additional radiotelegraph licenses to Mackay where its applications indicate, as they do here, that traffic will come to it primarily at the expense of Commercial and thereby reduce the latter company's ability to compete. We are of the opinion that such action should be taken in the instant proceeding.

⁴ See footnote 2, page 35 of this decision.

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While the majority made no ultimate finding as to rates, their basic finding that the impact of these grants on the rate structure as a whole should not be substantial clearly demonstrates their belief that there may be some increase, although slight. We take an even dimmer view of this phase of the overall problem. If these two grants will have a slight impact on the rate structure, what will be the situation when Mackay applies for authority to duplicate RCAC's circuits throughout the world as they have stated they intend to do if the instant proposals are granted? We cannot ignore the foreseeable future. We are compelled to examine the effects of our acts from a long-range point of view, and when we do so here we are forced to the conclusion that what we have here is but the initial step in a process which will require a series of rate increases during an era when businesses and individuals are already beset on all sides by increased costs of operation and living. If we were able to see where certain advantages would accrue to the public which would outweigh the rate disadvantages resulting from these grants, we might be able to justify these grants. But from the record herein we are unable to determine that the grants will result in such advantages either directly or indirectly.

In the "Oslo" case Mackay generally advanced the same arguments as it does in the instant proceeding, and, with minor exceptions, the Commission made findings which are similar to those made by the majority herein. There, however, the Commission came to the conclusion that Mackay's application should be denied and the court upheld the Commission. In so doing, the court specifically rejected Mackay's contentions as to the requirements of the Act for the licensing of competitive circuits which, in modified form, apparently have been adopted by the majority herein.

In view of the concern expressed⁵ by the court regarding the practical elimination from competition of a cable com-

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pany affiliate, we believe that the majority opinion errs in not placing equal emphasis on the evidence in the record in the instant case that a grant of the Mackay applications would mean the practical withdrawal of Commercial Cable and All America from competition.

The majority attempt to show that in practice the Commission has not followed the "Oslo" decision and call attention to the fact that subsequent to that decision, the Commission has in many instances granted duplicate radiotelegraph circuits. As the majority have indicated, however, for the most part, [4889] such grants were made during the course of World War II when the Board of War Communications, which was responsible for coordinating communications activities of the government, specifically favored a policy of duplicate circuits in the interest of national defense. It is pertinent to note that shortly after the end of the war all such duplicate circuit grants were made subject to Commission review in the proceedings in Docket No. 7974, *In the Matter of Radiotelegraph Service Between the United States and Foreign and Overseas Points*.

While it is true that hearings have not been held in this proceeding and that it has been postponed until further order, it is to be noted that the Commission has not dismissed the proceeding. As a matter of fact, as recently as November 13, 1950, when it last considered applications for renewal of radiotelegraph licenses, the Commission took recognition of the pendency of the proceedings in Docket No. 7974 and inserted a uniform provision in each radiotelegraph license which it renewed, to read as follows:

"This license is issued for the period until December 1, 1951, instead of the two year period provided for in Section 6.29 of the Commission's Rules and Regulations, because of the pendency of the proceedings in Docket No. 7974."

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Moreover the Commission has on several occasions since the "Oslo" decision reiterated its basic policy regarding regulation of common carriers under the Communications Act. Thus, in its decision in Docket No. 7723, *In the Matter of the Application of Mackay Radio and Telegraph Company, Inc., etc.*,⁶ the Commission stated "It is recognized that the policy of the Communications Act is to maintain competition in the international field. It is clear, however, from the Act that this does not mean a blind, indiscriminate policy of authorizing extensions of service by the carriers."

Though much time has elapsed since the Oslo decision, passage of time considered as of the present situation has shown only more the need for restraint in uneconomic expansions and wasteful duplication of international communications facilities. As was demonstrated so clearly in World War II, the United States is dependent to a great extent on the development and maintenance of a strong international communication system for carrying out its far flung commercial, diplomatic and military interests. The facilities developed and maintained by the American owned international communications companies played a vital part in the war effort, and in the maintenance of adequate communication channels all over the world. We feel that, in the interest of national security and defense, no steps should be taken, as a matter of over-all national policy, which would result in the weakening of the American international communications system or in the withdrawal of important cable facilities from use, merely for the sake of permitting an expansion by one carrier of its particular communications services. This is particularly true during this era when we have found it necessary to authorize increases in international telegraph rates several times⁷ in

⁶ 4 Pike and Fischer RR 963, 984 (1947). See also *In the Matter of Mackay Radio and Telegraph Company, Inc., etc.*, 8 FCC 11, 20 (1940); *In the Matter of Postal Telegraph Cable Co., etc.*, 9 FCC 271, 276 (1943).

⁷ See Reports and Orders of the Commission, *In the Matter of Charges for Communications Service between the United States and Overseas and Foreign Points* (Docket No. 8230), adopted July 30, 1947, April 22, 1948, and January 26, 1949, respectively.

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order to prevent the carriers from [4890] operating their presently authorized services at a loss. We do not believe that under such circumstances indiscriminate duplication of international communications can be found to be in the public interest. In fact, we are convinced that the Commission would be derelict in its duty under the Communications Act both to the public and to the international communications industry if, in the absence of a showing that there is a public need therefor, or that public interest would otherwise be served thereby, it authorized such duplication.

We believe that in the regulation of common carriers, free and untrammelled competition, as advocated by the applicant, must bow to the above-described criteria of public interest. In this connection, we are impressed with the policy importance of this case in view of the expressed determination of Mackay to seek duplicate circuits at every turn if it is successful herein. The Commission found in 1940, and we believe the same holds true today, that "the preservation of existing facilities which are satisfactorily serving the public is of primary importance, and that to intensify a highly competitive situation, not justified by the traffic and revenue available, may be uneconomically disastrous to the American communications systems as a whole"⁸. Such action could also go far toward destroying the very objective of common carrier regulation under the Communications Act, which the Commission is duty bound to uphold.⁹

The above discussion with respect to our policy on competition should not be construed as an indication that we would not, in any case, authorize duplicating international radiotelegraph circuits upon proper application. It does mean, however, that the applicant must demonstrate

⁸ *In the Matter of Mackay Radio and Telegraph Company, Inc.*, 8 FCC 11, 20 (1940).

⁹ See Communications Act of 1934 as amended, Section 1.

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that, through the operation of such competing circuit, *some public need would be served, or some advantage would accrue to the public in terms of such matters as lower rates, or new, different or better services.*

We believe that the facts of record, when considered in the light of collateral official Reports of the Commission, clearly demonstrate that grants of Mackay's instant proposals would not be in the public interest for at least the following reasons:

1. The capacity of existing telegraph communications facilities between the United States on the one hand, and The Netherlands, Portugal and Surinam on the other, is in excess of that required to handle the present and expected volume of telegraph traffic under normal operating conditions.
2. No new traffic would be generated and only a redistribution of existing traffic volumes would result.
3. The proposals would mean the practical withdrawal of Commercial Cable from competition because of the traffic which would be diverted from Commercial to Mackay.

[4891]

4. Any diversion of outbound traffic from Commercial to Mackay would result in a reduction in revenue to the AC&R System, and to that extent, would impose an additional financial burden upon the United States communications system as a whole.
5. The proposals would decrease the revenues of all established competing companies except the applicant's.
6. Grants, in accordance with the policy enumerated by the majority, are merely the initial step in a process which might very well require a series of rate increases.

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7. While a grant of these proposals would introduce competition between radio and radio, it is a big step in the direction of substantial reduction of competition between radio and cable, which will eventually bring the AC&R System into violation of Section 314 of the Act.

The Communications Act requires that the Commission must find that a grant of an application for a radiotelegraph license will serve the public interest, convenience or necessity. The majority base their conclusion on the premise that competition, where reasonably feasible, is in the public interest. While we do not disagree with the general thesis that the question as to whether competition is feasible is a factor to be considered, nevertheless, we are of the opinion that the Act requires a more concrete and immediate demonstration of public benefit than a hypothetical advantage that may accrue in the undetermined future from competition of the type proposed herein. The above-listed facts of record show clearly that a grant of the instant applications will not provide the public with any of the benefits, such as new or improved service, reduced rates, or the creation of new traffic, that have been long accepted as criteria of public interest. Accordingly, it is our opinion that the Commission should find herein:

- (a) That the public interest, convenience, or necessity will not be served by a grant of the applications of Mackay Radio and Telegraph Company, Inc. for special temporary authorization or for modification of license to communicate directly with Portugal, Surinam and The Netherlands.
- (b) That the public interest, convenience, or necessity will not be served by a grant of the application of Mackay Radio and Telegraph Company, Inc. to

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communicate with The Netherlands via its relay station at Tangier, North Africa¹⁰.

It should be noted that our conclusions herein are addressed entirely to the question of whether or not Mackay should be granted circuits to the points at issue in addition to those already licensed to RCAC. There is no issue before [4892] us in this case as to whether Mackay should be authorized to operate these circuits instead of RCAC, and a decision based upon our conclusions would not preclude Mackay, at an appropriate time, from applying for authorization for any or all of the circuits at issue herein, in place of RCAC.

In the light of the disturbing international conditions which have developed since the record in this case was made, it is possible that it will become necessary at some future date to authorize duplicate circuits to various countries without formal hearing for the same reasons that such grants were made during World War II. But, again, this should be the exception and not the rule, and our thinking in connection with a general policy on matters of this nature does not preclude us from voting to temporarily authorize more than one circuit between given points in the event of an emergency, irrespective of whether different or better service would be rendered, since the *number* of circuits between certain points rather than lower rates or different or better service, might be more in the public interest under emergency conditions.

¹⁰ As noted above, Mackay's Tangier application was occasioned by the fact that The Netherlands authorities might not be prepared to operate a direct circuit at once. Consequently, the considerations which prompted our denial of the direct circuit with The Netherlands are equally applicable thereto.

Notice of Appeal and Statement of Reasons Therefor.

(See Rule 37(e) of D. C. Court of Appeals.)

[A1]

IN THE

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA

RCA COMMUNICATIONS, INC.,
Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,
Appellee.

No. 10951.

Notice of Appeal and Statement of Reasons Therefor.**I.****NOTICE OF APPEAL.**

NOW, comes RCA Communications, Inc., this 15th day of March, 1951, pursuant to Sections 402(b) and (c) of the Communications Act of 1934, as amended, 47 U. S. C. 402(b) and (c), and Rule 37 of the Rules of this Court, and gives this notice of appeal from the Final Decision and Order of the Federal Communications Commission dated February 21, 1951, publicly announced on February 23, 1951, in so far as said Decision and Order granted the applications of Mackay Radio and Telegraph Company, Inc. (herein called "Mackay") for a modification of license to authorize direct radiotelegraph communication between the United States and Portugal and The Netherlands and for a modification of license to authorize communication with The Netherlands via Mackay's relay station at Tangier, North Africa.

Notice of Appeal and Statement of Reasons Therefor.

[A2]

II.

STATEMENT OF THE NATURE OF THE PROCEEDINGS.

1. Appellant is a common carrier of radiotelegraph communications and was incorporated on January 3, 1929 under the laws of the State of Delaware. It is a wholly owned subsidiary of Radio Corporation of America (herein called "RCA"), a Delaware corporation. Appellant, upon its organization, took over the point-to-point communications business theretofore conducted by RCA. Appellant renders an international point-to-point radiotelegraph service between the United States and points throughout the world, including direct service with Portugal and The Netherlands and with The Netherlands via Appellant's relay station at Tangier, North Africa.

2. Since 1929, Appellant has operated direct radiotelegraph circuits between the United States and Portugal and The Netherlands except for a period during World War II when operations with The Netherlands were interrupted.

3. Mackay is a common carrier of radiotelegraph communications and was incorporated under the laws of the State of Delaware on September 13, 1926. Mackay is engaged in the international radiotelegraph business and is part of the international cable and radiotelegraph system of the International Telephone and Telegraph Corporation (herein called "IT&T").

4. In addition to Appellant, there are presently two other United States telegraph carriers (The Western Union Telegraph Company and The Commercial Cable Company, which is affiliated with Mackay) serving Portugal and The Netherlands directly or indirectly, by cable, and one other carrier (Mackay) serving Portugal, indirectly by radiotelegraph.

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[A3] 5. The proceeding before the Commission was instituted by an order of the Commission adopted on February 6, 1948, designating for hearing the applications of Mackay for modification of license and for special temporary authorizations to communicate directly with certain foreign countries including Portugal and The Netherlands and with The Netherlands via Tangier.

6. On February 12, 1947, Mackay filed an application for special temporary authorization to communicate directly with The Netherlands and on February 13, 1947, it filed an application for special temporary authorization to communicate directly with Portugal. On June 14, 1947, the Commission denied Mackay's said applications.

7. On July 3, 1947, Mackay filed a petition requesting the Commission to reconsider its aforesaid denial. On October 13, 1947, the Commission reversed its previous order and granted said applications for special temporary authorizations for a period of 90 days. On November 4, 1947, Appellant filed a petition requesting the Commission to reconsider its order of October 13, 1947. On February 6, 1948, the Commission issued its order granting Appellant's petition and directing that the outstanding special temporary authorizations of Mackay to communicate directly with Portugal and The Netherlands and certain other countries, not here in issue, be cancelled and set aside.

8. On March 25, 1948, the Commission denied a Mackay petition to consolidate for hearing Appellant's applications for renewal of licenses to communicate with these countries on the ground that the issues set forth in the order instituting the proceeding were directed "primarily to the question of whether Mackay Radio and Telegraph Company, Inc. should be authorized to communicate [directly] with the points in question in addition to the existing circuits."

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[A4] 9. The hearings commenced on April 26, 1948 and concluded on June 22, 1948. The Initial Decision issued on July 29, 1949 and looked toward a granting of Mackay's applications to communicate directly with Portugal and The Netherlands and to communicate with The Netherlands via Tangier. It proposed a denial of Mackay's application to communicate with Surinam. Oral argument was held on December 16, 1949, after the submission of exceptions by Appellant and Mackay, and a brief by Appellant.

10. The Commission handed down its Decision and Order on February 23, 1951, which granted Mackay a modification of license authorizing direct communication by it with Portugal and The Netherlands and authorizing communication with The Netherlands via Tangier. The Order denied Mackay's application for modification of license to communicate with Surinam. The applications for special temporary authorizations to communicate with Portugal and The Netherlands were dismissed and the application for special temporary authorization to communicate with Surinam was denied.

III.

STATEMENT OF REASONS FOR APPEAL.

1. In so far as the Decision and Order granted Mackay's applications for direct communication with Portugal and The Netherlands and with The Netherlands via Tangier, thereby admittedly adversely affecting Appellant's revenue, and adversely affecting Appellant's service, they are contrary to law and beyond the authority and jurisdiction of the Commission, for the following reasons:

(a). The Decision and Order are contrary to the public interest, convenience and necessity, the basic statutory standard contained in the Communications Act of 1934;

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[A-5] (b) The Decision and Order are contrary to the terms of the Commission's order of February 6, 1948, instituting the hearings on which the Decision and Order purport to be based, determine issues not specified in said order, fail to include a statement of necessary findings and conclusions, as well as the reasons or basis therefor, upon material issues presented on the record, and are otherwise contrary to the Administrative Procedure Act, 5 U.S.C. 1001, *et seq.*;

(c) The Decision and Order are arbitrary, capricious and not supported by law;

(d) The Decision and Order are not supported by substantial evidence;

(e) The Decision and Order are not supported by but are inconsistent with the facts as found by the Commission;

(f) The Decision and Order and operation by Mackay of the proposed circuits would substantially lessen competition between cable and radio in telegraph service between the United States and Portugal and The Netherlands and unlawfully tend to create monopoly, contrary to Section 314 of the Communications Act of 1934.

(g) The Decision and Order authorize wasteful and inefficient use of radio frequencies in violation of Sections 303(c) and 309(a) of the Communications Act of 1934.

(h) The Decision and Order are based upon an interpretation of the basic statutory standard contained in the Communications Act of 1934, which is contrary to law. *Mackay Radio and Telegraph Company, Inc. v. Federal Communications Commission*

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F. 2d 641 (D.C. Cir. 1938).

[A-6] (i) Adoption of the Decision and Order was in dereliction of the Commission's duty under Section 1 of the Communications Act of 1934.

(j) The Decision and Order deprive Appellant of property without due process of law, contrary to the Fifth Amendment to the Constitution of the United States.

IV.

PRAYER.

WHEREFORE, Appellant prays that this Court hear and determine this appeal and issue an order reversing said Decision and Order of the Commission, and for such other and further relief as to this Court may seem just and proper.

Respectfully submitted,

RCA COMMUNICATIONS, INC.,

By /s/ HOWARD R. HAWKINS
Howard R. Hawkins

/s/ JAMES E. GREELEY
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Lawrence J. McKay

**Notice of Intention of Mackay Radio and Telegraph Co.
Inc. to Intervene.**

ACKNOWLEDGMENT OF SERVICE.

Service by hand delivery of the foregoing "Notice of Appeal and Statement of Reasons Therefor" and receipt of a correct copy thereof are hereby acknowledged this 15th day of March, 1951..

FEDERAL COMMUNICATIONS COMMISSION,

By /s/ RICHARD A. SOLOMON
Attorney for Appellee
Benjamin Franklin Post Office Bldg.
Washington 25, D. C.

**Notice of Intention of Mackay Radio and Telegraph Co.
Inc. to Intervene.**

(See Rule 37(e) of D. C. Court of Appeals.)

[A7]

IN THE
UNITED STATES COURT OF APPEALS,
FOR THE DISTRICT OF COLUMBIA.

RCA COMMUNICATIONS, INC.,
Appellant,

v.

FEDERAL COMMUNICATIONS
COMMISSION,
Appellee.

No. 10951.

**Notice of Intention of Mackay Radio and Telegraph
Company, Inc. to Intervene.**

Now comes Mackay Radio and Telegraph Company, Inc., a corporation under the laws of the State of Delaware,

*Notice of Intention of Mackay Radio and Telegraph Co.
Inc. to Intervene.*

by its Attorneys, and pursuant to the provisions of Section 402 (d) of the Communications Act of 1934, as amended, states that it is entitled to participate in the proceedings to be had before this Honorable Court upon the above entitled Appeal of RCA Communications, Inc. from the Decision and Order of the Federal Communications Commission and hereby gives notice of its intention to intervene therein for the reasons set forth in the annexed verified statement of interest.

MACKAY RADIO AND TELEGRAPH COMPANY, INC.

By.....

JAMES A. KENNEDY,

By.....

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Washington, D. C.

Stipulation.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA.

RCA COMMUNICATIONS, INC.,
Appellant;

v.

FEDERAL COMMUNICATIONS COMMISSION,
Appellee,

MACKAY RADIO AND TELEGRAPH
COMPANY, INC.,
Intervenor.

No. 10,951.

IT IS HEREBY STIPULATED, CONSENTED AND AGREED by and between the parties hereto and the intervenor that the printed record on appeal shall be contained in a joint appendix and shall consist of the following items:

- R Application filed by Mackay Radio and Telegraph Co. for modification of license. Received June 3, 1946.
- R Application of Mackay Radio and Telegraph Co. for authority to communicate with The Netherlands via Tangier relay. Received December 10, 1947.
- R Mackay Radio and Telegraph Co. amendment to its application by changing point of communication from The Hague to Amsterdam, The Netherlands. Received June 24, 1948.
- R Decision of the Commission. Adopted February 21, 1951. Released February 23, 1951.

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- R Commission order granting petition for reconsideration of RCA Communications, Inc., of November 4, 1947, and designating for hearing the application of Mackay. Adopted February 6, 1948.
- F Notice of Appeal and Statement of Reasons Therefor (See Rule 37(e) of D. C. Court of Appeals).
- F Notice of Intention of Mackay Radio and Telegraph Co., Inc. to Intervene (See Rule 37(e) of D. C. Court of Appeals).

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R	811.....	2-8, 13-25
R	812-813.....	
R	814.....	1
R	816.....	21-25
R	817.....	1-15
M	817.....	16-25
M	818.....	
M	819.....	1-15
R	819.....	16-25
R	820.....	1-8, 12-25
R	821-822.....	

Stipulation.

VOLUME 6

	Page	Line
M	825.....	1-24
R	825.....	25
R	826.....	1-13
R	827.....	20-25
E	828-830.....	
R	831.....	1-7
M	831.....	8-25
R	835.....	6-25
R	836-839.....	
R	840.....	7-25
R	841.....	
R	842.....	1-19
M	842.....	20-25
M	843.....	1-6
R	850.....	15-25
R	851.....	1-14
R	861.....	17-25
R	862.....	
R	863-864.....	
R	865.....	1-11
R	874.....	15-25
R	875.....	1-9, 15
R	876.....	24-25
R	877.....	1-17
M	877.....	16-25
M	878.....	1-2
M	895.....	20-25
M	896.....	1-6
R	902.....	9-25
M	903.....	1-5
M	905.....	21-25
M	906.....	
M	907.....	1-2, 17-25
M	908.....	1-15

Stipulation.

VOLUME 6

	Page	Line
R	931.....	17-22
R	934.....	15-25
R	935.....	1-14
R	937.....	15-23
M	947.....	11-25
M	948.....	
M	949.....	1-2

VOLUME 7.

R	960.....	5-10
R	993.....	
R	994.....	
R	995.....	1-4
M	998.....	11-25
M	999.....	1-10
F	1013.....	11-25
F	1014.....	
F	1015.....	1-10
R	1015.....	11-25
F	1016.....	
F	1017.....	1-5
R	1017.....	6-10
R	1019.....	11-25
R	1020.....	
R	1021.....	1-10
R	1025.....	19-25
R	1026-1029.....	
R	1030.....	1-16
M	1030.....	17-25
M	1031.....	1-9

Stipulation.

VOLUME 8

	Page	Line
F	1047.....	3-25
F	1048.....	
F	1049.....	1-19
R	1049.....	20-22
R	1052.....	9-25
R	1053-1063.....	
R	1064.....	1-11
R	1065.....	12-25
R	1066.....	
R	1067.....	1-20
F	1072.....	4-18
R	1073.....	18-25
R	1074-1076.....	
R	1077.....	1-2
F	1078.....	24-25
F	1079.....	1-10
R	1098.....	11-16
M	1098.....	2-10, 17-25
R	1106.....	2-25
R	1107.....	1-10, 13-19
M	1126.....	16-25
M	1127.....	1-21
R	1128.....	23
R	1134.....	9-25
R	1135.....	
R	1136.....	
R	1137.....	1-5
F	1139.....	9-25
F	1140.....	1-15
M	1153.....	6-25
M	1154.....	1-2
M	1160.....	9-25
M	1161.....	1-20
R	1163.....	14-25

Stipulation.

VOLUME 8

	Page	Line
M	1164.....	24-25
R	1164.....	1-3
M	1165.....	1-17
M	1180.....	4-23
M	1181.....	25
M	1182.....	1-2
R	1188.....	17-25
R	1189.....	1-11

VOLUME 9

R	1196.....	1-6
M	1197.....	4-25
M	1198.....	
M	1199.....	1-15
M	1210.....	17-25
M	1211.....	1-24
M	1214.....	21-25
M	1215.....	1-6
M	1216.....	11-20
M	1217.....	7-18
M	1218.....	19-23
M	1219.....	10-14
R	1221.....	15-25
R	1222.....	
R	1223.....	1-17
R	1224.....	10-21
R	1225.....	1-10
R	1282.....	19-25
R	1283.....	1-24
R	1284.....	2-25
M	1285.....	14-20
M	1320.....	11-25

Stipulation.

VOLUME 9

Page	Line
M 1321.....	1-21
R 1323.....	9-16
R 1328.....	6-10
M 1328.....	11-25
M 1329.....	1-18
F 1329.....	19-25
M 1330.....	7-11
R 1330.....	12-25
F 1330.....	1-6
R 1331.....	1-14
M 1331.....	15-25
M 1332-1334.....	
M 1335.....	1-19
R 1335.....	20-25
R 1336.....	
R 1337.....	1-12
M 1341.....	23-25
M 1342.....	
M 1343.....	1
M 1353.....	20-25
M 1354.....	1-13
R 1371-1372.....	
R 1373.....	3-23
M 1373.....	24-25
M 1374.....	1-20
R 1376.....	
R 1377.....	1-19
M 1379.....	7-16
R 1381.....	11-25
R 1382.....	
R 1383.....	1-16

Stipulation.

VOLUME 10

	Page	Line
R	1392.....	8-25
R	1393.....	
M	1394.....	
M	1404.....	17-25
M	1405-1406.....	
M	1407.....	1-17
R	1407.....	18-25
R	1408.....	1
R	1418.....	14-25
R	1419	
R	1420.....	1-14
R	1427.....	15-18
R	1434.....	1-4, 8-25
R	1435.....	7-10
R	1438.....	14-25
R	1439.....	
R	1440.....	1-3

VOLUME 11

M	1463.....	20-25
M	1464.....	1-18
M	1473.....	3-25
M	1474.....	
M	1475.....	1-22
M	1476.....	24-25
M	1477.....	1-2
M	1492.....	5-25
M	1493-1495.....	
R	1495.....	10
M	1496.....	1
R	1496.....	2-25
M	1497.....	1-18
M	1498.....	18-25

Stipulation.

VOLUME 11

	Page	Line
M	1499.....	
M	1500.....	1-10
R	1500.....	11-25
R	1501.....	
E	1502.....	1-7
M	1502.....	8-25
M	1503.....	1-12
M	1504.....	3-26
M	1505.....	
M	1506.....	1-2
F	1511.....	8-25
F	1512.....	1-6
R	1512.....	7-25
R	1513.....	14-25
R	1514.....	1-10
F	1539.....	5-12
F	1541.....	22-25
F	1542.....	
F	1543.....	1-11

VOLUME 12

R	1631.....	5-10
M	1635.....	2-25
M	1636.....	
M	1637.....	1
R	1642.....	7-25
R	1643.....	1-7, 17-23
R	1644.....	5-13
R	1646.....	2-5, 9-11
R	1647.....	1-13
R	1649.....	4-13, 24-25
R	1650.....	1-17

Stipulation.

VOLUME 12

Page	Line
R 1659.....	4-13
R 1662.....	19-25
R 1663.....	1-16
R 1664.....	1-12
R 1685.....	16-25
R 1686.....	
R 1687.....	
R 1688.....	1-13
R 1695.....	4-8, 16-25
R 1696-1698.....	
R 1699.....	1-7, 10-16
R 1700.....	2-25
R 1701.....	1-17
R 1703.....	2-25
R 1704.....	1-2
R 1705.....	7-25
R 1706.....	
R 1707.....	1-16, 24-25
R 1708-1711.....	
R 1712.....	1-13
R 1716.....	8-25
R 1717.....	1-18
R 1718.....	8-17 (except first sentence commenc- ing on 1. 8)
R 1728.....	15-25
R 1729-1732.....	
R 1733.....	1-15
R 1755.....	9-21
R 1765.....	6-21
R 1767.....	17-25
R 1768.....	
R 1769.....	1-13, 21-25

Stipulation.

VOLUME 12

Page	Line
R 1770.....	25
R 1776.....	4-25
R 1777.....	
R 1778.....	1-8
R 1779.....	19-25
R 1780.....	1, 5
R 1782.....	4-25
R 1783-86.....	
R 1787.....	1-21

VOLUME 13

F 1790.....	7-8
M 1793.....	10-25
M 1794.....	1-9
F 1794.....	10-25
F 1795.....	
F 1796.....	1-22
M 1806.....	3-17
M 1807.....	12-23
M 1809.....	15-25
M 1810.....	
M 1811.....	1-19
M 1824.....	14-24
1827.....	4, 5, 14-25
1828-1830.....	
M 1831.....	1
M 1834.....	1-7, 20-25
M 1835.....	
M 1836.....	1-4
M 1837.....	14-25
M 1838.....	1-15
R 1845.....	1-21
M 1880.....	7-10

*Stipulation.***VOLUME 14**

	Page	Line
R	1926.....	19-25
R	1928.....	6-25
R	1929.....	1-19
R	1930.....	17-21
R	1931.....	9-12
M	1946.....	5, 17-20
M	1949.....	23-25
M	1950.....	1-16, 24-25
M	1951.....	1-8
R	1957.....	11-14
R	1966.....	3-12, 25
R	1967.....	1-22
R	1973.....	12-25
F	1974.....	1
M	1974.....	2-13
R	1977.....	2-25
R	1978.....	1-19

VOLUME 15

R	2037.....	19-25
R	2038-2044.....	
R	2045.....	1-7
R	2046.....	9-25
R	2047.....	
R	2048-2049.....	
R	2051.....	13-25
R	2052.....	
R	2053.....	1-10
R	2086.....	3
R	2088.....	9-25
R	2089-2090.....	
R	2091.....	1-17

Stipulation.

VOLUME 16

	Page	Line
M	2134.....	15-25
M	2135.....	1-11
M	2137.....	18-25
M	2138.....	
M	2139.....	1-17
M	2142.....	12-25
M	2143-2144.....	
M	2145.....	1-21
R	2152.....	13-25
R	2153.....	1-4
M	2153.....	16-20
M	2158.....	8-25
M	2159.....	1-9
M	2168.....	2-25
M	2169.....	
M	2170.....	1-9
R	2180.....	23
M	2183.....	2-11
R	2184-2190.....	
R	2191.....	1-2

VOLUME 17

R	2220.....	21-25
R	2221-2222.....	
R	2223.....	1-17
M	2230.....	16-25
M	2231.....	1-18
R	2236.....	16-25
R	2237.....	
R	2238.....	1-4
R	2246.....	19-25
R	2247.....	
R	2248.....	1-5
R	2249.....	9-22

Stipulation.

VOLUME 17

	Page	Line
R	2250.....	23-25
R	2253.....	15
M	2272.....	14-25
M	2273-2274.....	
M	2275.....	1-8
M	2278.....	2-18
M	2285.....	13-25
M	2286.....	
M	2287.....	1-22
R	2302.....	2
M	2304.....	3-25
R	2305.....	19-25
R	2306.....	1-25
M	2307.....	14-25
R	2307.....	1-13
M	2308.....	
M	2310.....	19-25
M	2311.....	1-3

VOLUME 18

R	2338.....	23-25
R	2339.....	1-16
F	2339.....	17-25
F	2340.....	
F	2341.....	1-16
R	2341.....	17-25
R	2342.....	
R	2343.....	1-12
F	2343.....	13-25
F	2344.....	1-12
M	2344.....	13-25
M	2345.....	1-6
M	2346.....	13-25
M	2347.....	1-10

Stipulation.

VOLUME 18

	Page	Line
M	2351.....	3-16
R	2353.....	14-25
M	2354.....	24-25
R	2354.....	1-23
M	2355.....	1-3
M	2357.....	9-25
M	2358.....	1-9
R	2364.....	22-25
R	2365.....	1-18
M	2369.....	24-25
M	2370.....	1-19
M	2386.....	10-25
M	2387.....	
M	2388.....	1-12
M	2389.....	7-10, 20-25
M	2390.....	
M	2391.....	1-14
M	2396.....	15-21
R	2405.....	20-25
R	2406.....	1-6
M	2408.....	3-8
R	2408.....	9-12
M	2410.....	3-25
M	2411.....	
M	2412.....	1-18
M	2413.....	7-25
M	2414-2415.....	
R	2429.....	1
M	2431.....	6-25
M	2432.....	1-5
R	2434.....	14-25
R	2435.....	
R	2436.....	1-16
F	2436.....	17-25

*Stipulation.***VOLUME 18**

	Page	Line
F	2437.....	1-24
R	2437.....	25
R	2438.....	1-7
F	2439.....	7-25
F	2440.....	1-4
M	2441.....	17-25
M	2442.....	1-24
R	2447.....	10-24
R	2448.....	7-25
M	2449.....	8-25
R	2449.....	1-4
M	2450-2453.....	
M	2454.....	1-9
M	2455.....	8-14
M.	2464.....	8-23

VOLUME 19

R	2467.....	11-13, 19-20
R	2471.....	18-25
R	2472.....	
R	2473.....	1-16, 18-25
R	2474.....	1-2, 15-25
R	2475.....	
R	2476.....	1-20, 22-25
R	2477.....	1-3
M	2477.....	23-25
M	2478.....	1-5, 18-21
F	2479.....	7
M	2490.....	19-25
M	2491.....	
M	2492.....	1-5
F	2492.....	6-25
R	2502.....	1-25
R	2503.....	1-4

*Stipulation.***VOLUME 19**

	Page	Line
M	2504.....	23-25
M	2505-2507.....	
M	2508.....	1-7
F	2525.....	18
F	2527.....	16-25
F	2528.....	
F	2529.....	1-9
M	2529.....	10-19
M	2572.....	25
M	2573.....	1-6
M	2574.....	12-25
M	2575-2576.....	
M	2577.....	1-5

VOLUME 20

F	2600.....	7-10
M	2609.....	1-24
M	2611.....	1-19
M	2617.....	10-25 exclude first sentence.
M	2618.....	1-11
M	2619.....	18-22
M	2621-2622.....	
M	2623.....	1-11
M	2636.....	16-25
M	2637-2638.....	
M	2639.....	1-16
M	2640.....	15-25
M	2641.....	1-3
F	2645.....	16-25
F	2646.....	
F	2647.....	
F	2648.....	

Stipulation.

VOLUME 19

	Page	Line
F	2649.....	
F	2650.....	
F	2651.....	
F	2652.....	
F	2652.....	1-7
M	2653.....	8-25
M	2654.....	1-8
F	2654.....	20-25
F	2655.....	
F	2656.....	
F	2657.....	1-24
M	2660.....	12-25
M	2661.....	
R	2662.....	10-25
M	2662.....	1-9
R	2663.....	1
R	2667.....	10-25
R	2668.....	
R	2690.....	20-25
R	2691-2692.....	
R	2693.....	1-19
F	2693.....	20-25
F	2694.....	
F	2695.....	
F	2696.....	1

VOLUME 20

M	2696.....	2-25
M	2697.....	
M	2698.....	1-3
M	2706.....	13-25
M	2707.....	1-7
M	2708.....	10-21
F	2712.....	4-19

Stipulation.

VOLUME 20

	Page	Line
F	2713.....	6-25
F	2714.....	1-15
F	2719.....	11-22
R	2733.....	15-25
R	2734.....	
R	2735.....	1-10, 13-25
R	2736.....	
R	2737.....	1-8, 10-16
M	2742.....	25
M	2743.....	1-20
R	2744.....	10-25
R	2745.....	1-11
R	2755.....	2-8, 13-22
R	2796-2797.....	
R	2798.....	
R	2799.....	1

VOLUME 21

M	2845.....	7-10
M	2846.....	10-25
M	2847.....	1-11, 24-25
M	2848.....	
M	2849.....	1-22

VOLUME 22

F	2909.....	4-7
R	2910.....	25
R	2911-2912.....	
R	2913.....	1
R	2940.....	4-14
R	2941.....	4-25
R	2942.....	1-13
F	2961.....	23-25
F	2962.....	
F	2963.....	

Stipulation.

VOLUME 22

	Page	Line
F	2964.....	1-9
R	2991.....	6-16
R	2994.....	2-4
R	2995.....	1-23
F	2996.....	2-3
M	3000.....	7-12
F	3004.....	7-25
F	3005.....	1-4, 24-25
F	3006.....	1, 4-25
F	3007.....	
F	3008.....	1-20

EXHIBITS

- R 5, 6, 7, 8, 79 (second page), 80 (second page except second and third paragraphs), 92, 99, 121 (fifth and sixth paragraphs), 128, 130, 136 (including only the preamble and second paragraph of Art. III of the translation copy, 160, 168, 173, 190, 191, 191A, 191B, 191C, 191D, 192, 205 (pp. 5-6), 206, 207.

M 85, 86, 120, 126, 131, 138A, 162, 163, 163A.

Dated: New York, N. Y.
September 27, 1951.

JAMES E. GREELEY

Counsel for RCA Communications, Inc.,
Appellant.

MAX GOLDMAN

Counsel for Federal Communications
Commission, Appellee.

JAMES A. KENNEDY

Counsel for Mackay Radio & Telegraph
Company, Inc., Intervenor.

IN THE UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT

No. 10,951

RCA COMMUNICATIONS, INC., APPELLANT

FEDERAL COMMUNICATIONS COMMISSION, APPELLEE

MACKEY RADIO AND TELEGRAPH COMPANY, INC., INTERVENOR

STIPULATION

It is hereby stipulated by and between the attorneys for the parties in the above-entitled action that the Joint Appendix filed herein is incorrect in the following particulars:

The last line on page 593 of said Joint Appendix which presently reads "—mate of \$37,976 or \$37,516 per year, the record does not" should read "—mate of \$37,976 or \$37,516 per year, the record does," as it appears on page 4851 of the original record filed with this Court.

(Signed) RICHARD A. SOLOMON,
*Counsel for Federal Communications
Commission, Appellee.*

(Signed) JAMES E. GREELEY,
*Counsel for RCA Communications, Inc.,
Appellant.*

(Signed) JAMES A. KENNEDY,
*Counsel for Mackay Radio and
Telegraph Company, Inc., Intervenor.*

United States Court of Appeals for the District of Columbia
Circuit.

Filed Jun. 24, 1952.

JOSEPH W. STEWART,
Clerk.

In the United States Court of Appeals for the District of Columbia
Circuit

No. 10,951

RCA COMMUNICATIONS, INC., APPELLANT

FEDERAL COMMUNICATIONS COMMISSION, APPELLEE

MACKEY RADIO AND TELEGRAPH COMPANY, INC., INTERVENOR

*Certificate of T. J. Slowie, Secretary, Federal Communications
Commission*

I, T. J. Slowie, Secretary of the Federal Communications Commission, do hereby certify that the last sentence of paragraph 53 of the Decision of the Federal Communications Commission In the Matter of Mackay Radio and Telegraph Company, Inc., Applications for radio telegraph circuits between the United States and Finland, Portugal, Surinam, and The Netherlands, Docket No. 8777, as issued by the Commission reads as follows:

"While it appears from the foregoing that the additional net revenues, which Mackay and AC&R system may expect to derive from the operation of its proposed circuit to Portugal, will be less than the above-cited estimate of \$37,976 or \$37,516 per year, the record does indicate that Mackay and the AC&R system would derive additional net revenues."

Witness my hand and seal of the Federal Communications Commission on this 24 day of June, 1952.

FEDERAL COMMUNICATIONS COMMISSION;

(Signed) T. J. SLOWIE,

[SEAL.]

Secretary.

May 20, 1952.

Before HONORABLE HENRY W. EDGERTON, E. BARRETT PRETTYMAN,
and DAVID L. BAZELON, *Circuit Judges*, in Court

RCA COMMUNICATIONS, INC., APPELLANT

v.

FEDERAL COMMUNICATIONS COMMISSION, APPELLEE

MACKAY RADIO AND TELEGRAPH COMPANY, INC., INTERVENOR

On motion of Mr. Howard R. Hawkins, Mr. John T. Cahill, of the bar of the Supreme Court of New York, was permitted to argue, *pro hac vice*, by special leave of Court, for the appellant, at 2:02; continued for appellee by Mr. Stanley S. Neustadt, of the Bar of the Supreme Court of New York, who, on motion of Mr. Benedict P. Cottone, was permitted to argue, *pro hac vice*, by special leave of Court, for appellee, at 2:42. Short recess at 3:24. Continued by Mr. James A. Kennedy, attorney for intervenor, at 3:35; concluded by Mr. John T. Cahill, for appellant, at 3:55 to 4:06.

[Stamp:] United States Court of Appeals for the District of Columbia Circuit. Filed Nov. 6, 1952. Joseph W. Stewart, Clerk.

United States Court of Appeals for the District of Columbia Circuit

No. 10951

RCA COMMUNICATIONS, INC., APPELLANT

v.

FEDERAL COMMUNICATIONS COMMISSION, APPELLEE

MACKAY RADIO AND TELEGRAPH COMPANY, INC., INTERVENOR

On Appeal from a Decision of the Federal Communications
Commission

Decided November 6, 1952

Mr. John T. Cahill, of the Bar of the Supreme Court of New York, *pro hac vice*, by special leave of Court, with whom Messrs. Howard R. Hawkins and James E. Greeley were on the brief, for appellant.

Mr. Stanley S. Neustadt, Counsel, Federal Communications Commission, of the Bar of the Supreme Court of New York, *pro hac vice*, by special leave of Court, with whom Messrs. Benedict P. Cottone, General Counsel, Federal Communications Commission, and Richard A. Solomon, Acting Assistant General Counsel, Federal Communications Commission, were on the brief, for appellee. - Mr. Max Gold-

man, Assistant General Counsel, Federal Communications Commission, also entered an appearance for appellee.

Mr. James A. Kennedy, with whom Messrs. John A. Hartman, Jr., and Burton K. Wheeler were on the brief, for the intervenor.

Before EDGERTON, PRETTYMAN, and BAZELON, Circuit Judges.

EDGERTON, Circuit Judge:

This appeal is from a decision and order of the Federal Communications Commission, two Commissioners dissenting, which granted applications of the present intervenor, Mackay Radio and Telegraph Company, Inc., (Mackay), a public-service radio-telegraph carrier, for modification of its license so as to authorize it to operate, in competition with appellant RCA Communications, Inc., (RCAC), direct radiotelegraph circuits between the United States and the Netherlands and between the United States and Portugal. Since we declined to stay the Commission's order pending this appeal Mackay's proposed operations and arrangements may probably have come into actual effect.¹ However that may be, we shall call them "proposed" because we have to discuss the situation that existed when the Commission entered its order.

Mackay is a wholly-owned subsidiary of American Cable and Radio Corporation (AC&R), which also owns The Commercial Cable Company (Commercial) and All America Cables and Radio, Inc., (All America). International Telephone and Telegraph Corporation owns a majority of the capital stock of AC&R. At the time of the Commission's hearing Mackay operated licensed radiotelegraph circuits to about 40 foreign points. It handled very little Portuguese traffic and this only indirectly, by relay through an All America radio station in Peru. It handled almost no Netherlands traffic.¹

¹ In 1947, the latest year covered by the record, telegraph traffic of all sorts between the points involved in this case was distributed as follows:

	The Netherlands		Portugal	
	East-bound	West-bound	East-bound	West-bound
Commercial (cable)	22.7%	17.3%	6.5%	2.5%
Western Union (cable)	47.4%	29.8%	36.3%	13.9%
RCAC (radio; direct)	29.8%	52.8%	51.4%	80.7%
Mackay (radio; indirect)	0.1%	0.1%	5.8%	2.9%
	100 %	100 %	100 %	100 %

Appellant RCAC, a party to the proceeding before the Commission, is a wholly-owned subsidiary of Radio Corporation of America. It operates ² licensed radiotelegraph circuits to about 65 foreign points. It operates direct radiotelegraph circuits between the United States and the Netherlands and also between the United States and Portugal. At the time of the Commission hearing no other carrier did so.

Both Commercial and Western Union Telegraph Company (Western Union) furnish cable service between the United States and European points.³ Commercial owns cables between New York and Eire. Its Netherlands traffic is relayed from Eire to London and retransmitted to Rotterdam over leased facilities. Traffic to Portuguese points routed via Commercial is sent over owned and leased cables to the Azores, where it is relayed to Lisbon over foreign cables. Western Union has cables to England, whence traffic is forwarded to Amsterdam through connecting cables and land-lines. Western Union messages destined for Portugal are transmitted in basically the same way as Commercial's.

RCAC's radiotelegraph circuit between New York and Amsterdam is operated in conjunction with the Netherlands Administration of Posts, Telephones, and Telegraph. Mackay's proposed contract with the same correspondent provides that the Netherlands Administration will turn over to Mackay a proportion of its westbound traffic to the United States equal to Mackay's proportion of the total eastbound radio traffic sent to the Netherlands by all United States radiotelegraph carriers. Mackay will guarantee that at least 50% of AC&R-controlled traffic to the Netherlands will be transmitted by radiotelegraph. In order to meet this commitment AC&R will divert from Commercial to Mackay all unrouted non-Rotterdam Netherlands traffic. The Commission estimates that as a result of the agreement approximately 50% of Commercial's eastbound traffic will be diverted to Mackay.

Similarly, in the case of Portugal, Mackay proposes to deal with Portuguese Marconi, which is the RCAC correspondent. Portuguese Marconi will follow the same formula as the Netherlands Administration in determining the amount of westbound traffic to be given Mackay, and the AC&R system will transmit by Mackay and Marconi its unrouted eastbound traffic. The Commission estimates that 25% of Commercial's traffic will be thus diverted to Mackay.

The Commission found among other things:⁴ (1) Existing tele-

² Throughout this opinion, statements of fact in the present tense usually refer to the time of the Commission's hearing.

³ Western Union participated in the Commission hearing but did not intervene here.

⁴ The numbering and sequence are ours.

graph facilities (cable plus radio) are in excess of those required to handle present and expected traffic. (2) Mackay's proposed operations will redistribute present traffic rather than generate any appreciable amount of new traffic. (3) "It does not appear that Mackay's proposed service to each of the points at issue will result in lower rates or speedier service, or will otherwise be superior to or more comprehensive than the service now available via RCAC." (4) There is some possibility that Mackay will need additional frequencies, for Netherlands traffic, to provide continuous service throughout the eleven-year sunspot cycle. (5) Both Mackay's revenue and its expenses will be increased, but the net result will be financially beneficial to Mackay and to the AC&R system of which it is a part. (6) The revenue of other carriers will be reduced, but their expenses will not. (7) "When the over-all effect of a grant of the applications is considered, it appears that the added costs which might result on an industry-wide basis will be relatively small so that the impact on the rate structure as a whole should not be substantial." (8) Mackay is technically, financially and legally qualified and able to render adequate service. (9) There is "at present active competition not only between cable carriers and between cable and radiotelegraph carriers serving the points at issue, but also between such telegraph service provided by these carriers and the airmail and the radio telephone services." Granting Mackay's application (10) will "not endanger the ability of RCAC and Western Union to continue to provide competitive service either to the points at issue or, generally, in the field of international telegraph communications"; (11) "while resulting in some decrease in cable competition, will increase over-all competition for telegraph traffic generally . . ."; and (12) will "introduce competition between direct radiotelegraph circuits" and consequently "more effective competition between radiotelegraph carriers". The "ability of a carrier to provide direct communication service is an important factor in appealing for customer patronage . . ."

The Commission was "of the opinion that in those instances where there is only one direct radiotelegraph circuit to a point, [the Commission] should authorize a second competing radiotelegraph circuit where the applicant demonstrates that such competition is reasonably feasible". Finding it feasible here, the Commission granted Mackay's applications.

The record supports the Commission's basic findings that we have numbered (1) to (12) with the possible exception of the statement in (11) about "over-all competition", and we shall assume it supports that finding also. It may follow that, as the Commission thought, the proposed competition is reasonably feasible. But that is not the question. The Communications Act authorizes the Commission to grant licenses only if it "shall determine that public in-

terest, convenience, or necessity would be served by the granting thereof . . . " 47 U.S.C. §309. The Commission did so determine here. But we agree with the dissenting Commissioners that the Commission's basic findings do not support this determination.

The Commission said "The question before us herein of whether duplicate radiotelegraph circuits should be authorized is very similar, if not the same, as that which was before this Commission in connection with the Oslo case." We agree. In this case as in the Oslo case the question before the Commission was whether a duplication that would do the public little harm⁵ and no good,⁶ but was feasible and would create competition, met the statutory standard of "public interest, convenience, or necessity". But in the Oslo case the Commission decided this question the other way⁷ and we affirmed its decision. *Mackay Radio & Telegraph Co. v. Federal Communications Commission*, 68 App. D.C. 336, 97 F. 2d 641. In that case it appeared that RCAC carried about 60% of eastbound and 88% of westbound telegraph traffic (radio plus cable) between the United States and Norway. Commercial and Western Union carried, by cable, practically all the rest. And there was "only one direct service, whether by cable or radio, between the United States and Norway; . . . the radio circuit operated at the American end by the intervenor RCAC, and at the Norwegian end by the Norwegian Department of Telegraphs." 68 App. D.C. at 337, 97 F. 2d at 642. Mackay applied to the Commission for a license to operate a direct radiotelegraph circuit to Norway. But the Commission found among other things that there were "adequate radio and cable facilities, keen competition, and service with which there is no complaint. The proposed new circuit would not offer new or improved service, reduce rates, or create traffic. . . . The total revenue to the American owned companies . . . would be reduced and additional expense incurred." *In the Matter of Mackay Radio & Telegraph Company, Inc.*, 2 F.C.C. 592, 600. Accordingly the Commission decided that a grant of Mackay's application would not serve the public interest, convenience, or necessity. In affirming that decision we observed that the Communications Act does not show "a congressional belief that two radiotelegraph circuits are necessarily better than one. Such a belief would be as strange as a belief that two telephone systems, or two railroads, are necessarily better than one. . . . Though the Communications Act forbids the licensing of concerns which violate the anti-trust laws, it does not apply to the radiotelegraph business the policy of free com-

⁵ Findings 7 and 10 above.

⁶ Findings 1, 2 and 3 above.

petition, but a contrary policy. . . . [It] forbids competition by all who cannot prove that their entry will serve the 'public interest, convenience or necessity.'" 68 App. D.C. at 338, 97 F. 2d at 643.

Neither Congress nor the Supreme Court has limited the effect of the Oslo case, though Congress was promptly asked to do so. We decided the case April 11, 1938. Beginning May 2, 1938, a subcommittee of the Senate Committee on Interstate Commerce held hearings, in which the Oslo decision was discussed, on a bill, S. 3875, that proposed to amend §313 of the Communications Act by adding: "It is hereby declared to be the intention and policy of the Congress to prevent monopoly and to encourage competition in direct foreign radio telegraph communication; and, for the purposes of this act, in considering applications for licenses to engage in direct foreign radio telegraph communications, or applications for modifications or renewals of such licenses, the Federal Communications Commission shall consider competition in such communication to be in the public interest.'" ⁸ It was brought out at the hearing that the Commission had reported to Congress on February 5, 1935: "Competition has its worst effects in the field of foreign communication. Communications in most foreign countries are handled as a monopoly. Where the monopoly has two competing American companies offering to establish circuits, it can drive progressively harder bargains to the detriment of American interests." ⁹ S. 3875 was not enacted.

We think *McLean Trucking Co. v. United States*, 321 U.S. 67 (1944), on which the Commission places some reliance, confutes rather than supports its present theory. The Court there sustained orders of the Interstate Commerce Commission authorizing consolidation of seven large motor carriers. The Court said: "The history of the development of the special national transportation policy suggests . . . that the policies of the anti-trust laws determine the public interest in railroad regulation only in a qualified way. And the altered emphasis in railroad legislation on achieving an adequate, efficient, and economical system of trans-

⁷ We do not imply that the Commission has applied a policy of "free" competition in the present case. It has not.

⁸ Hearings on S. 3875, 75th Cong., 3d Sess., p. 1.

⁹ *Ibid.*, p. 34.

In its present decision the Commission concedes there may be some danger of this sort, but points out that it "has statutory authority, particularly in connection with its consideration of applications for renewal of licenses, which would enable it to take the appropriate action in those cases where a carrier persisted in making concessions which were seriously detrimental to the interests of the United States industry."

portation through close supervision of business operations and practices rather than through heavy reliance on the enforcement of free competition . . . has its counterpart in motor carrier policy . . . Congress recognized there may be occasions when 'competition between carriers may result in harm to the public as well as benefit; and that when a [carrier] inflicts injury upon its rival, it may be the public which ultimately bears the loss.' " 321 U.S. at 83-84. Legislative history suggests that the Communications Act was intended to apply the same principles as the Interstate Commerce Act.¹⁰

In its present decision the Commission pointed to the large increase in international telegraph traffic and the "strong trend" from cable to radio since it decided the Oslo case in 1936. No doubt such changes make duplication of radio circuits more feasible, but they do not show that competition in this regulated public-utility industry will benefit the public. The Commission said: "Competition can generally be expected to provide a powerful incentive for the rendition of better service at lower cost. Those seeking patronage of customers are spurred on to install the latest developments in the art in order to improve their services or products, and in order to enable them to reduce expenses and thereby lower their rates or prices. The benefits to be derived from competition should, therefore, not be lightly discarded." This argument in favor of the Commission's general theory is not a finding that the specific competition here in issue will produce better service or lower rates or any other public benefit. Any implication that benefit will result is contradicted by the Commission's finding (3) above. The Commission's brief on this appeal speaks in general terms of "long range" benefits of competition. But in deciding this case the Commission made no finding that long range benefits would result from its grant to Mackay, and nothing in its basic findings would have supported such a conclusion. Its unqualified finding (3) is broad enough to contradict such a conclusion. The Commission pointed out that it has licensed duplicating radiotelegraph circuits to foreign countries in a number of instances and has renewed such licenses. But it did not say what benefits, or that any benefits, have resulted in any instance.¹¹

¹⁰ 73d Cong., 2d Sess., Sen. Rep. No. 781.

¹¹ A footnote in the Commission's brief states that "in the field of international telegraph communications, which is competitive, rates during the period from the beginning of the last war have not gone up nearly as much as rates in the domestic telegraph and intra-state telephone industries, which are, for all practical purposes, non-competitive. See R. 3857; *In the Matter of the Western Union Telegraph Co.*; 11 F.C.C. 262."

Section 314 of the Communications Act is devoted, as we said in the Oslo case, "wholly to an effort to maintain competition between radio circuits on the one hand and telegraph and cable lines on the other." 68 App. D. C. at 340, 97 F. 2d at 645. In the present case the Commission found that granting Mackay's applications will "not result in such substantial reduction of competition between cable and radio, or in the creation of a monopoly, so as to bring the AC&R system companies, and particularly Mackay, into violation of Section 314 of the Communications Act." We need not consider whether in our opinion the record supports this conclusion.

Reversed.

PRETTYMAN, *Circuit Judge*, dissenting:

I disagree with my brethren in this matter.

The facts are comparatively simple. The case concerns cable and radio between the United States and The Netherlands and Portugal. Five companies are involved. RCAC is independent of the other companies involved and has the only direct radio circuit between New York and The Netherlands and between New York and Portugal. Western Union is independent of the other companies and has cables, owned or leased, from New York to The Netherlands and (via British pick-up) to Portugal. The Commercial Cable Company and Mackay are wholly-owned subsidiaries of the American Cable & Radio Corporation, called AC&S. Commercial has cables between New York and The Netherlands and from New York to Portugal, both services being *via* retransmission or British pick-up. Mackay gets a portion of the Portugal business indirectly through a circuit *via* Lima. In summary, therefore, there are one direct radio service and two cable services to The Netherlands and to Portugal; and one other indirect radio service to Portugal.

The Commission proposes to grant Mackay a direct radio circuit to The Netherlands and one to Portugal.¹

The Commission found, on the one hand, that there is ample business to justify another radio carrier and that another carrier would not endanger the financial stability or the service of the carriers now operating; and it found, on the other hand, that the capacity of existing facilities is in excess of that required to handle the expected volume of traffic, that the new service would not result in lower rates or speedier service except that the new service would be superior to the present cable service, and that the new service would result in a reduction of the revenues of RCAC and Western Union but would not reduce their expenses. It further found that the radio business which would go to Mackay would largely be

¹ The order also includes an indirect service to Amsterdam *via* Tangier, but that grant does not figure separately in the argument.

drawn from the cable business of Commercial and that there would be some diversion from RCAC and Western Union.

On the basis of the foregoing findings, the problem reduces itself to (1) whether the Commission can authorize a competitive service as a matter of policy where one is not actually needed and (2) whether the contemplated diversion of traffic from the cables of Commercial to the radio of Mackay would violate Section 314 of the statute.

RCAC says, principally, that the common carrier concept, applicable in railroad, etc., regulation, applies here and that the new service cannot be authorized unless a public need for it is affirmatively proved. The Commission says that competition, whenever it is "reasonably feasible" is part of the public interest, convenience and necessity. By "reasonably feasible" the Commission seems to mean that the new service will not endanger the old.

I think that, when existing traffic permits more than one carrier, and where the existence of a second carrier would not endanger the stability or the service of the existing carrier, competitive service may well be in the public interest. If that be so, then, where the necessary conditions are established, the question whether there should or should not be a second carrier is for the Commission to decide.

The point is brought into sharp focus by the discussion of the so-called *Oslo* case.² In that case, under somewhat similar facts, Mackay applied for a license to operate to Oslo, Norway. The Commission denied the application. Mackay contended that the public convenience *necessarily required* competing service. This court affirmed the Commission, holding that competition is not necessarily or inevitably in the public interest. As I read the opinion we did not hold that competition is not in the public interest.

I hesitate to disagree with the author of the *Oslo* opinion, who is also the author of the present opinion of the court, as to what the court held in that case. He says that in that case we affirmed a decision the other way on the very question now before us. But it seems to me clear that the question there and the question here were not the same but were two distinct questions.

The controlling basic principle of public utility regulation is the public interest, convenience and necessity. That requires, in a nutshell, efficient service at reasonable rates. That, in turn, requires a financially sound operator and at the same time denies him exorbitant profits. Hence it follows that, if there be between two points traffic enough to support only one efficient operator and supply him with no more than reasonable profits, the public interest

² Mackay Radio & Tel. Co. v. Federal Communications Comm'n, 68 App. D.C. 336, 97 F. 2d 641 (1938).

requires that only one operator be licensed. Two operations dividing business sufficient only for one will inevitably result in poor service. On the other hand, if there be enough traffic to support two efficient operators and supply both with reasonable profits, it may well be that the public interest requires the injection of an element of competition into the situation. Given business enough for two operators, some competition in service may well increase the standards of both and thus be in the public interest. These principles have been the guides for certification by the Interstate Commerce Commission. I need not delay this case to exhaust the authorities.³ I cite a few in the footnote.³ The point is clearly contained in the declaration of the national transportation policy in the statute.⁴ It is agreed that the principles of Interstate Commerce Commission regulation apply to the regulation of common carrier communication under the present statute.⁵

In the *Oslo* case, *supra*, the question was whether competition is always necessarily in the public interest. The answer was "No". I agree with that answer to that question. The question here is whether competition is ever in the public interest. The answer, it seems to me, is "Yes". The nub of the matter is the amount and nature of the available and prospective business. If the business will support two operators, the regulatory authority has a wide discretion in determining whether to serve the public interest by drastic

³ *McLean Trucking Co. v. United States*, 321 U.S. 67, 80-88, 88 L. Ed. 544, 64 S. Ct. 370 (1944), particularly footnotes 9-24; *Texas & Pac. Ry. v. Gulf, Etc., Ry.*, 270 U.S. 266, 277, 70 L. Ed. 578, 46 S. Ct. 263 (1926); *Chesapeake & Ohio Ry. v. United States*, 283 U.S. 35, 42, 75 L. Ed. 824, 51 S. Ct. 337 (1931); *Interstate Commerce Comm'n v. Parker*, 326 U.S. 60, 89 L. Ed. 2051, 65 S. Ct. 1490 (1945); *American Trucking Assns. v. United States*, 326 U.S. 77, 86, 89 L. Ed. 2065, 65 S. Ct. 1499 (1945); *N. Y. Central Securities Co. v. United States*, 287 U.S. 12, 77 L. Ed. 138, 53 S. Ct. 45 (1932); *Clarke v. United States*, 101 F. Supp. 587 (D.C.D.C. 1951); *Hudson Transit Lines v. United States*, 82 F. Supp. 153 (S.D. N.Y. 1948), *aff'd*, 338 U.S. 802, 94 L. Ed. 485, 70 S. Ct. 59 (1949); *Norfolk Southern Bus Corp. v. United States*, 96 F. Supp. 756 (E.D. Va. 1950), *aff'd*, 340 U.S. 802, 95 L. Ed. 590, 71 S. Ct. 68 (1950); *Lang Transp. Corporation v. United States*, 75 F. Supp. 915 (S.D. Cal. 1948); *C. E. Hall & Sons v. United States*, 88 F. Supp. 596 (Mass. 1950). See also Sharfman, *The Interstate Commerce Commission*, Part III-A, pp. 355-359 (1935).

⁴ 54 STAT. 899 (1940), 49 U.S.C. preceding § 1.

⁵ 48 STAT. 1666 (1934), 47 U.S.C. § 153(h); SEN. REP. NO. 781, 73rd Cong., 2d Sess.

supervision of a single operator or to install an automatic self-regulator in the form of a competitor.⁶

In the present case the Commission made extensive findings, which I have summarized. They were amply supported in the record. They in turn support the ultimate finding that the competition of Mackay will not imperil the financial stability of RCAC. And that finding is ample support for the exercise of the judgment of the Commission that the presence of Mackay in the field will serve the public interest.⁷

RCAC also argues that the proposed grant to Mackay would be in violation of Section 314 of the Communications Act.⁸ It is not necessary for the court, in the view it takes of the case, to consider that point. But, since I would affirm the Commission on the first question, above described, I have to consider the Section 314 point. That section, in pertinent part, provides: ". . . no person engaged . . . in the business of transmitting . . . for hire . . . communications . . . by radio . . . shall . . . acquire . . . or operate any cable . . . between any place in any State . . . and any place in any foreign country . . . if . . . the purpose is and/or the effect thereof may be to substantially lessen competition or to restrain commerce . . . or unlawfully to create monopoly in any line of commerce; . . ." The section also contains a converse provision prohibiting cable operators from owning or operating radio stations, etc.

It is shown in the record that if these radio circuits be licensed to Mackay some of the cable business of its sister company (Commercial) will be diverted to it. RCAC argues that this is a lessening of competition and a restraint of commerce in flat violation of Section 314.

Section 314, it must be noted, does not prohibit all common ownership of radio and cable. It prohibits such ownership when certain conditions exist, that is, when the purpose or effect is substantially to lessen competition, to restrain commerce, or to create a monopoly. Certainly complete common ownership removes subsidiaries from competition with each other. If Section 314 be construed to prohibit a lessening of competition between sister companies regardless of other circumstances, the conditions specified in the section become meaningless and superfluous. So construed the section would flatly prohibit all common ownership of radio and cable operations, which it obviously does not do. The section must have been aimed at some

⁶ United States v. Pierce Auto Lines, 327 U.S. 515, 536, 90 L. Ed. 821, 66 S. Ct. 687 (1946).

⁷ Chesapeake & Ohio Ry. v. United States, 283 U.S. 35, 75 L. Ed. 824, 51 S. Ct. 337 (1931).

⁸ 48 STAT. 1087 (1934), 47 U.S.C. § 314.

condition or tendency other than those inherent in common ownership as such. It must have been aimed at a lessening of competition discernible in the circumstances of the specific situation, in addition to the bare fact of common ownership. This idea is supported by the fact that, although it was known to the committees of Congress that Mackay and Commercial were under common ownership when the Communications Act of 1934 was under consideration, no unconditional prohibition of continued common ownership appears in that Act.

After the hearing but before the decision in the present case, the Commission had before it in another case, known as Docket 9093, the question whether the operation of Mackay (radio) and Commercial (cable) in common ownership violated Section 314. That proceeding was devoted to that question. After a full hearing, to which our present appellant, RCAC, was a party, and extensive findings, the Commission concluded that, while the Section applied, the ownership, control and operation of the companies within this system (AC&R) did not violate the section. The Commission referred, *inter alia multa*, to the fact that Mackay, a part of a radio-cable system since 1929, had been granted "an increasing number" of radio circuits to points in Europe during many years, prior and subsequent to the passage of the Act. In this connection it is significant that, despite the grant to Mackay of numerous duplicating circuits in the years 1936-1947, RCAC actually handled a larger proportion of the total international telegraph traffic in 1947 than it did in 1936; 31.7 per cent as compared with 20.6 per cent. It is also significant in this connection that the record shows that international telegraph rates, competitive, have not increased as much as domestic rates, for all practical purposes non-competitive. The decision in Docket 9093, rendered in May, 1950, was not appealed, was not encompassed in the appeal here, and is not before us.

Three considerations, principally, lead me to the conclusion reached by the Commission upon the Section 314 point. 1. Before this application there was a competitive situation between radio and cable services by the several companies in respect to Netherlands and Portugal business. It was a three-cornered competition. Western Union offered cable, RCAC offered radio, and AC&R offered cable. That competition will not be changed substantially by the grant of a radio circuit to AC&R. Western Union will still seek cable business, RCAC will still seek radio business, AC&R will certainly still seek cable business in the public market. There is nothing to show that it intends to shut down Commercial; rather the natural assumption is that in view of its agreement with The Netherlands Administration it will be a more acute seeker for cable business. It does not appear that the competition between cable and radio as presently offered by the three companies will be

lessened by the grant of a radio circuit to AC&R. Upon the basis of exhaustive studies and findings the Commission reached that conclusion. It is clearly correct.

As a matter of fact appellant RCAC does not rest its case upon a claim of a lessening of inter-company competition. It rests upon an intra-company shifting of business within the AC&R system.

2. If it be determined, as it has been (in Docket 9093), that the present operation of Mackay and Commercial in common ownership does not violate Section 314, I do not see how a shift of business from one twin to the other would lessen competition between them. There is no substantial competition between them now; there never—or hardly ever—is between twin subsidiaries. The present allocation of business between them is not the result of competition between them; it is the result of either parent's policy or customer requirement. A change in the parent's policy, which is what the proposed agreement is, is not a lessening of existing competition. So, if the common ownership in this case does not violate the section, a mere change in business allocation as between the non-competing twins would not violate it.

3. Section 314 embodies a portion of antitrust policy, specifically provided by the immediately preceding Section 313. The Commission was entitled to look at the whole picture in formulating its judgment as to the public interest. Thus viewed this grant of a radio circuit to Mackay certainly tends to serve the purposes of the statute. RCAC now enjoys a monopoly in radio between the places here involved. Mackay, by this grant, would introduce competition, would reduce restraint on commerce, and would destroy instead of create monopoly. The Commission thought these broader considerations pertinent and important. I think so too.

I think the decision of the Commission should be affirmed.

United States Court of Appeals for the District of Columbia Circuit

October Term, 1952

No. 10,951

RCA COMMUNICATIONS, INC., APPELLANT

v.

FEDERAL COMMUNICATIONS COMMISSION, APPELLEE

MACKAY RADIO AND TELEGRAPH COMPANY, INC., INTERVENOR

Appeal from Decision of the Federal Communications Commission

Before: Edgerton, Prettyman and Bazelon, Circuit Judges

JUDGMENT

This case came on to be heard on the transcript of the record from the Federal Communications Commission, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the decision and order of the Federal Communications Commission appealed from in this case be, and it is hereby, reversed, and that this case be, and it is hereby, remanded to said Federal Communications Commission for further proceedings not inconsistent with the opinion of this Court.

Per Circuit Judge EDGERTON.

Dated: November 6, 1952.

Separate dissenting opinion by Circuit Judge Prettyman.

United States Court of Appeals for the District of Columbia Circuit. Filed Nov. 6, 1952. Joseph W. Stewart, Clerk.

[Stamp:] United States Court of Appeals for the District of Columbia Circuit. Filed Jan. 8, 1953. Joseph W. Stewart, Clerk.

United States Court of Appeals for the District of Columbia Circuit

No. 10,954

RCA COMMUNICATIONS, INC., APPELLANT

v.

FEDERAL COMMUNICATIONS COMMISSION, APPELLEE

MACKAY RADIO AND TELEGRAPH COMPANY, INC., INTERVENOR

DESIGNATION OF RECORD

The Clerk will please prepare a certified transcript of record for use on petition to the Supreme Court of the United States for writ or certiorari in the above-entitled cause, and include therein the following:

1. Joint Appendix and stipulation of the parties to correct the joint appendix.
2. Minute entry of argument.
3. Opinion.
4. Judgment.
5. This designation.
6. Clerk's certificate.

(Signed) WALTER J. CUMMINGS, JR.,

*Solicitor General,**Counsel for Appellee.*

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing designation of record has been mailed to each of the following:

Howard R. Hawkins, Esquire,
James E. Greeley, Esquire,
Suite 1002 Wire Building,
1000 Vermont Avenue, N. W.,
Washington 5, D. C.,
Counsel for Appellant.

James A. Kennedy, Esquire,
67 Broad Street,
New York 4, New York;
Counsel for Intervenor.

(Signed) WALTER J. CUMMINGS, JR.,

*Solicitor General,**Counsel for Appellee.*

January 8, 1953:

United States Court of Appeals for the District of Columbia Circuit

I, Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia Circuit, hereby certify that the foregoing pages, numbered 1 to 714, both inclusive, constitute true copies of the joint appendix to the briefs and of the record and proceedings in the said Court of Appeals, as designated by counsel for appellee, in the case of:

RCA COMMUNICATIONS, INC., APPELLANT

v.

FEDERAL COMMUNICATIONS COMMISSION, APPELLEE,

MACKEY RADIO AND TELEGRAPH COMPANY, INC., INTERVENOR.

No. 10,951 January Term, 1953, as the same remain upon the files and records of said Court of Appeals.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this twenty-second day of January, A. D. 1953.

JOSEPH W. STEWART.

Clerk of the United States Court of Appeals for the District of Columbia Circuit. [Seal]

In the Supreme Court of the United States

October Term, 1952

No. —

FEDERAL COMMUNICATIONS COMMISSION, PETITIONER

VS.

RCA COMMUNICATIONS, INC., RESPONDENT

MACKAY RADIO AND TELEGRAPH COMPANY, INC., INTERVENOR

STIPULATION

It is hereby stipulated and agreed by and between counsel for the respective parties to the above-entitled cause that, for the purpose of the petition for a writ of certiorari, the printed record shall consist of the following:

1. Joint Appendix and stipulation of the parties to correct the Joint Appendix.
2. Minute entry of argument.
3. Opinion.
4. Judgment.
5. Designation of record.
6. Clerk's certificate.
7. This stipulation.

It is further stipulated and agreed that petitioner will cause the Clerk of the United States Court of Appeals for the District of Columbia Circuit to transmit the original transcript of record to the Supreme Court of the United States and that any of the parties may refer in their briefs to the record filed in the Supreme Court, including any part thereof which has not been printed.

WALTER J. CUMMINGS, JR.,
Solicitor General
Counsel for Petitioner

JAMES E. GREELEY,
Counsel for Respondent.

JAMES A. KENNEDY,
Counsel for Intervenor.

JANUARY 14, 1953

Supreme Court of the United States

No. 567, October Term, 1952

FEDERAL COMMUNICATIONS COMMISSION, PETITIONER

v.

RCA COMMUNICATIONS, INCORPORATED

Order allowing certiorari

Filed March 9, 1953

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Supreme Court of the United States

No. 568, October Term, 1952

MACKAY RADIO AND TELEGRAPH COMPANY, INCORPORATED,
PETITIONER

v.

RCA COMMUNICATIONS, INCORPORATED

Order allowing certiorari

Filed March 9, 1953

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.